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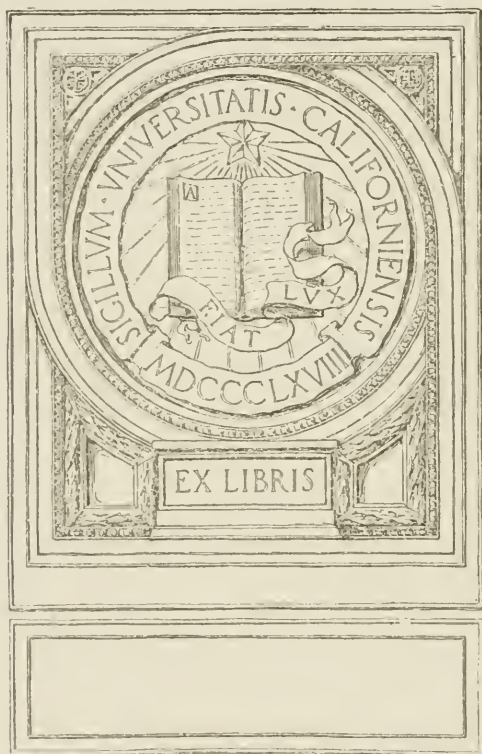
1915

INSURANCE LAWS of North Dakota

DIGEST 1915

W. C. TAYLOR
COMMISSIONER OF INSURANCE

GIFT OF



COMPILATION
OF THE
INSURANCE LAWS

OF THE
State of North Dakota
//

IN EFFECT JULY 1, 1915

BISMARCK, 1915

Compiled by
W. C. TAYLOR
Commissioner of Insurance

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August 1915

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INSURANCE LAWS OF NORTH DAKOTA

CONSTITUTION

§ 82. There shall be chosen by the qualified electors of the state at the times and places of choosing members of the legislative assembly, a secretary of state, auditor, treasurer, superintendent of public instruction, commissioner of insurance, three commissioners of railroads, an attorney general and one commissioner of agriculture and labor, who shall have attained the age of twenty-five years, shall be citizens of the United States, and shall have the qualifications of state electors. They shall severally hold their offices at the seat of government, for the term of two years and until their successors are elected and duly qualified, but no person shall be eligible to the office of treasurer for more than two consecutive terms.

POLITICAL CODE

CHAPTER 4.

ARTICLE 8—THE COMMISSIONER OF INSURANCE.

§ 172. DUTIES OF.] It is the duty of the commissioner of insurance:

1. To see that all laws of this state respecting insurance companies are faithfully executed.
2. To file in his office the articles of incorporation of all insurance companies organized or doing business in this state, and on application to furnish a certified copy thereof.
3. To report in detail to the attorney general any violation of law relative to insurance companies, their officers or agents.
4. To furnish the insurance companies required to make reports to him the necessary blank forms for the statements required.
5. To preserve in permanent form a full record of his proceedings and a concise statement of each company or agency visited or examined.
6. To furnish at the request of any person and on payment of his fees certified copies of any record or paper in his office, when he deems it not prejudicial to public interests so to do, and to give such other certificates as may be provided by law.
7. To furnish a written report to the governor on or before the fifteenth day of November of each year showing his official acts, the receipts and expenditures of his department during the preceding fiscal year, the condition of

the companies doing business in this state and such other information as will exhibit the affairs of his department; which report shall be printed, to the number of five hundred, at the expense of the state, and distributed among the members of the succeeding legislative assembly, and otherwise as provided by law. Such report must contain only an abstract of the reports of insurance companies.

8. To send a copy of his annual report to the insurance commissioner or other similar officer, of every other state and to each company doing business in this state.

9. To communicate on request to the insurance commissioner of any other state any facts which by law it is his duty to ascertain respecting companies doing business within such state.

10. To have an official seal and to employ competent clerks, such clerks to discharge such duties as he may assign, and in case of his sickness or temporary absence from office, his chief clerk shall have authority to sign his name and perform such other duties as are required by law pertaining to the duties of such commissioner of insurance. (R. C. 1905, § 136; R. C. 1895, § 132.)

§ 173. FEES.] The commissioner of insurance shall charge and collect such fees as are prescribed in chapter 18 of the civil code. (R. C. 1905, § 137; R. C. 1899, § 133.)

§ 174. SALARY OF COMMISSIONER OF INSURANCE.] The commissioner of insurance shall receive an annual salary of three thousand dollars, and shall reside at the capital of the state. (1909, Ch. 216, 4 R. C. 1905, 138; R. C. 1895, 134.)

In R. C. 1905, 138, his salary of two thousand dollars is "to include all services performed by him."

§ 175. COMMISSIONER DISQUALIFIED, STATE EXAMINER TO ACT, WHEN.] In case the commissioner of insurance is a director, officer, agent, attorney, a stockholder of or directly interested in any insurance company except as an insured, the examination of such company shall be made by the state examiner, or by some person appointed by him; and no officer or agent of any insurance company doing business in this state shall be deputed to examine the affairs of such company. (R. C. 1905, § 139; R. C. 1895, § 135.)

CHAPTER 49.

ARTICLE 11—INSURANCE TAX FOR FIRE DEPARTMENTS.

§ 3993. DUTY OF CLERK.] The clerk of each city, town or village in this state having an organized fire department shall on or before the thirty-first day of October in each year make and file with the state auditor his certificate stating the existence of such department, and the date of its organization, the number of steam, hand or other engines, hook and ladder trucks, and hose carts in actual use, the number of organized companies, the number of members of each company, and the system of water supply in use in such department, together with such other facts as the auditor may require. (R. C. 1905, § 2966; 1887, Ch. 53, § 1; R. C. 1899, § 2462.)

As to right of hose company to share of insurance premium moneys under statute. *Continental Hose Co. No. 1 v. Fargo*, 17 N. D. 5, 114 N. W. 834.

§ 3994. STATE AUDITOR TO FURNISH BLANKS. INSURANCE COMPANIES TO MAKE STATEMENTS.] The blanks required by law to be furnished by the state auditor to insurance companies shall contain the names of the cities, towns and villages entitled to benefits under this article, and every insurance company doing business in this state shall include in its annual statement the amount of all premiums received by them upon policies issued on property within the corporate limits of such city, town or village during the year ending on the preceding thirty-first day of December. (R. C. 1905, § 2967.)

§ 3995. STATE AUDITOR TO ISSUE WARRANTS.] The state auditor on the first day of June thereafter shall issue and deliver to the treasurer of such city, town or village, having an organized fire department entitled to the benefits of this article, his warrant upon the state treasurer for an amount equal to two per cent. of the premium received upon policies issued on property in any city, town or village, which warrants shall be numbered consecutively, and shall each specify the date of its issuance and to whom payable, and such warrants shall be paid by the state treasurer to the treasurer of such city, town or village, upon presentation thereof, and when so received by said treasurer the same shall be paid over to the treasurer of each separate organized fire company, or companies, in equal proportion, who are members in good standing in the North Dakota Firemen's Association, and having a membership of at least fifteen members for a period of eight months prior to the date of the certificate of the clerk, as provided in section 3993, and having the management of at least one steam, hand or fire engine, hook and ladder truck or hose cart, upon the written order of such company or companies, approved by the city, city council, trustees or other governing body of such city, town or village; provided, that in cities, towns and villages having a paid fire department, the amount so received by the city, town or village treasurer shall be placed in a fund to be disbursed by the city council, trustees, or other governing body of such city, town or village in maintaining such fire department. (R. C. 1905, § 2968.)

Appropriation of insurance tax to fire companies is constitutional. *Cutting v. Taylor*, 3 S. D. 11, 51 N. W. 949, 15 L. R. A. 691.

On right to injunction against city treasurer to determine rights of fire companies to money claimed under statute. *Continental Hose Co. No. 1 v. Mitchell*, 15 N. D. 144, 105 N. W. 1108.

§ 3996. QUALIFICATIONS OF FIRE DEPARTMENTS AND COMPANIES.] No city, town or village having one or more organized fire companies therein, shall be entitled to any of the benefits arising from this article, unless the fire department or companies shall have been in actual existence eight months prior to the filing of the certificate required by section 3993, and unless such fire department or company shall have had for such period, as a part of its equipment, at least one steam, hand or other fire engine, truck or hose cart, with a membership of at least fifteen persons for said period of eight months. (R. C. 1905, § 2969.)

§ 3997. SECRETARY TO NOTIFY TREASURER.] It shall be the duty of the secretary of the North Dakota Firemen's Association to notify the treasurer

of each city, town or village entitled to the benefits of this article, on or before the first day of June of each year, of the name of the treasurer of each department or separate organized company in good standing in the North Dakota Firemen's Association. (R. C. 1905, § 2970.)

§ 3998. FAILURE TO FILE CERTIFICATE A WAIVER.] If the certificate required by section 3993 is not filed with the auditor on or before the thirty-first day of October in each year, the city, town or village so failing to file such certificate shall be deemed to have waived and relinquished its rights for such year to the appropriation herein provided for; provided, however, that in case where any city has filed its certificate for three successive years and drawn money thereunder for such years, the certificate herein provided for may be filed at any time up to and including March first of the succeeding year without waiving the right to the appropriation herein named. (R. C. 1905, § 2971.)

CIVIL CODE

CHAPTER 12.

CORPORATIONS.

ARTICLE 1—THE CREATION OF CORPORATIONS.

§ 4494. CORPORATION DEFINED.] A corporation is a creature of the law, having certain powers and duties of a natural person. Being created by the law, it may continue for any length of time which the law prescribes. (R. C. 1905, § 4162.)

What constitutes de facto corporations. 118 Am. St. Rep. 253.

As to similar provision in Cal. Civ Code, § 283, see *Johnson v. Goodyear Min. Co.*, 127 Cal. 4, 47 L. R. A. 338, 78 Am. St. Rep. 17, 59 Pac. 304.

§ 4495. RESERVED POWER OF LEGISLATIVE ASSEMBLY.] Every grant of corporate power is subject to alteration, suspension or repeal in the discretion of the legislative assembly. (R. C. 1905, § 4163.)

§ 4496. COLLATERAL INQUIRY PROHIBITED.] The due incorporation of any company, claiming in good faith to be a corporation under this chapter, and doing business as such, or its right to exercise corporate powers shall not be inquired into collaterally in any private action to which such de facto corporation may be a party. (R. C. 1905, § 4164.)

Receipt of benefits from contract with corporation estops from denying corporate existence. *Building & Loan Asso. v. Chamberlin*, 4, S. D. 271, 56 N. W. 897; *School Dist. v. Alderson*, 6 D. 145, 41 N. W. 466; *Wright v. Lee*, 2 S. D. 596, 51, N. W. 706.

Whether corporation has exceeded its authority in purchasing real estate can be inquired into only by state. *Gilbert v. Hole*, 2 S. D. 164, 49 N. W. 1.

Attempted incorporation of bank creates simply a partnership, in absence of law under which banking corporation might be formed. *Davis v. Stevens*, 104 Fed. 235.

Statute presupposes a de facto corporation; it does not preclude private persons from denying existence, de jure or de facto, of alleged corporation. *Davis v. Stevens*, 104 Fed. 235.

Due incorporation of bank cannot be inquired into in action by depositor to recover amount of deposits from incorporators after bank's insolvency. *Mason v. Stevens*, 16 S. D. 320 N. W. 424.

§ 4497. NAME REQUIRED.] Every corporation must have a corporate name which it has no power to change unless expressly authorized by law; but the misnomer of a corporation in any written instrument does not invalidate the instrument if it can be reasonably ascertained from it what corporation is intended. (R. C. 1905, § 4165.)

§ 4198. CORPORATIONS CLASSIFIED.] Corporations are either:

1. Public; or,
2. Private. (R. C. 1905, § 4166.)

State is a body politic, and not a corporation. *State v. Taylor*, 7 S. D. 533, 64 N. W. 548.

§ 4499. PUBLIC, HOW REGULATED.] Public corporations are formed or organized for the government of a portion of the state. Such corporations are regulated by the political code or by local statute. (R. C. 1905, § 4167.)

State is body politic and not a public corporation. *State v. Taylor*, 7 S. D. 533, 64 N. W. 548.

§ 4500. PRIVATE, PURPOSES.] All corporations not public are private. Private corporations may be formed for any purpose for which individuals may lawfully associate themselves. (R. C. 1905, § 4168.)

Corporation organized under N. D. Rev. Codes, 1899, as private corporation. *Arrison v. Company D*, N. D. N. G., 12 N. D. 554, 98 N. W. 83, 1 A. & E. Ann. Cas. 368.

Restricting membership of association to persons belonging to certain fraternal order does not change the fact that it is a corporation. *Masonic Association v. Taylor*, 2 S. D., 324, 50 N. W. 93.

§ 4505. CONTENTS OF ARTICLES.] The articles of incorporation must set forth:

1. The name of the corporation.
2. The purpose for which it was formed.
3. The place where its principal business is to be transacted.
4. The term for which it is to exist.
5. The number of its directors or trustees and the names and residences of those who are to serve until their successors are elected and qualified.
6. If there is a capital stock, its amount and the number of shares into which it is divided. (R. C. 1905, § 4173.)

As to similar provision in Cal. Civ. Codes, § 290, see *People ex rel. Schlinder v. Flint*, 64 Cal. 49, 28 Pacific, 495; *Thomas v. Placerville Gold Quartz Min. Co.*, 65 Cal. 600, 4 Pac. 641; *Chapman v. Doray*, 89 Cal. 52, 26 Pac. 605; *Martin v. Deetz*, 102 Cal. 55, 41 Am. St. Rep. 151, 36 Pac. 368; *Porter v. Lassen County Land and Cattle Co.*, 127 Cal. 261, 59 Pac. 563; *People ex rel. Weatherly v. Golden Gate Lodge No. 6 B. P. O. E.*, Cal. 257, 60 Pac. 865.

§ 4507. ARTICLES. RAILWAYS, ETC.] The articles of incorporation of railway corporations shall be in compliance with section 4610; of insurance corporations, in compliance with section 4837; of fraternal associations or corporations, in compliance with section 5018; of banking corporations, in compliance with section 5148. (R. C. 1905, § 4175.)

ARTICLE 10—ASSESSMENTS OF STOCK.

§ 4570. WHEN LEVIED.] The directors of any corporation formed or existing under the laws of this state, after one-fourth of its capital stock has been subscribed, may for the purpose of paying expenses, conducting business or paying debts, levy and collect assessments upon the subscribed capital stock thereof in the manner and form and to the extent provided herein. (R. C. 1905, § 4236.)

As to similar provisions in Cal. Civ. Code, § 331, see *Younglove v. Steinman*, 80 Cal. 375, 22 Pac. 189; *Lankershim Ranch, Land & Water Co. v. Herberger*, 82 Cal. 600, 23 Pac. 134; *Arroyo Ditch & Water Co. v. Superior Ct.*,

92 Cal. 47, 27 Am. St. Rep. 91, 28 Pac.; San Joaquin Land & Water Co. v. Beecher, 101 Cal. 70, Pac. 349; San Bernardino Invest. Co. v. Merrill, 108 Cal. 490, 41 Pac. 487; Market Street R. Co. v. Hartman, 116 Cal. 260, 48 Pac. 65; Herbert Kraft Co. Bank v. Bank of Orland, 133 Cal. 64, 65 Pac. 143 .

§ 4571. LIMITATION OF.] No assessment must exceed ten per cent. of the amount of the capital stock named in the articles of incorporation, except in the cases in this section otherwise provided for, as follows:

1. If the whole capital of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or, if a less amount is sufficient then it may be for such a percentage as will raise that amount.

2. The directors of railroad corporations may assess the capital stock in installments of not more than ten per cent. per month, unless in the articles of incorporation it is otherwise provided.

3. The directors of fire or marine insurance corporations may assess such a percentage of the capital stock as they deem proper. (R. C. 1905, § 4237.)

Right to make assessment of stock. 76 Am. St. Rep. 126.

Effect of transfer of shares of stock on liability for unpaid subscriptions. 47 L. R. A. 246; 30 L. R. A. (N. S.) 283.

Liability of pledge of stock as a shareholder. 36 L. R. A. 139; 19 L. R. A. (N. S.) 249.

As to similar provision in Cal. Civ. Code, § 332, see Santa Cruz R. Co. v. Spreckles, 65 Cal. 193, 3 Pac. 661, 802; Marysville Electric Light & P. Co. v. Johnson, 93 Cal. 538, 27 Am. St. Rep. 215, 29 Pac. 126; Kohler v. Agassiz, 99 Cal. 93 Pac. 741; Shively v. Eureka Tellurium Gold Min. Co., 129 Cal. 293, 61 Pac. 939.

CHAPTER 18.

INSURANCE CORPORATIONS.

Article 1. General provisions, § 4834.

2. Provisions common to all domestic insurance companies, §§ 4835-4852.
3. Domestic life insurance companies to deposit securities with insurance commissioner, §§ 4846-4852.
4. Misrepresentations by insurance companies, §§ 4853-4854.
5. Discrimination by life insurance companies, §§ 4855-4856.
6. Disbursements by insurance companies, § 4857.
7. Diversion of funds for political purposes by life insurance, § 4858.
8. Salaries of officers and agents of life insurance companies, §§ 4859-4860.
9. Investment of funds of life insurance companies, §§ 4861-4862.
10. Provisions peculiar to domestic stock insurance companies, §§ 4863-4869.
11. Provisions peculiar to domestic mutual insurance companies, §§ 4870-4881.
12. Surplus of life insurance company, §§ 4882-4887.

13. Consolidation and reinsurance of domestic insurance companies, §§ 4888-4893.
14. Provisions peculiar to mutual hail insurance companies, §§ 4894-4901.
15. When hail insurance policies take effect, §§ 4902-4903.
16. Provisions peculiar to fidelity insurance companies, §§ 4904-4912.
17. Provisions peculiar to foreign insurance companies, § 4913.
18. Provisions common to all insurance companies, §§ 4914-4930.
19. Reports of life insurance companies, § 4931.
20. County mutual companies, §§ 4932-4950.
21. Live stock, §§ 4951-4956.
22. Chattel mortgages in application, §§ 4957-4958.
23. Licensing insurance agents, §§ 4959-4960.
24. Resident agents for transaction of fire insurance business, §§ 4961-4964.

ARTICLE 1.—GENERAL PROVISIONS.

§ 4834. TERMS DEFINED.] When consistent with the context and not obviously used in a different sense the term “company” or “insurance company,” as used herein, includes all corporations, associations, partnerships or individuals engaged as principals in the business of insurance; the word “domestic” designates those companies incorporated or formed in this state and the word “foreign” when used without limitation includes all those formed by authority of any other state or government. (R. C. 1905, § 4417.)

ARTICLE 2—PROVISIONS COMMON TO ALL DOMESTIC INSURANCE COMPANIES.

§ 4835. SUBJECT TO WHAT PROVISIONS OF LAW.] All insurance companies now or hereafter incorporated or formed by authority of any law of this state, except when otherwise expressly provided, may exercise the powers and shall be subject to the duties and liabilities provided by this chapter. The general provisions of law relating to the powers, duties and liabilities of corporations shall apply to all incorporated domestic insurance companies, so far as such provisions are pertinent and not in conflict with other provisions of law relating to such companies. (R. C. 1905, § 4418.)

§ 4836. HOW AND FOR WHAT PURPOSE FORMED.] Any number of persons, not less than seven, may form a corporation to carry on the business of insurance, either upon the stock or mutual plan, against loss or damage by fire, lightning, cyclone, tornado or hail, or the risks of inland navigation and transportation, or to make insurance upon the lives of persons and every insurance pertaining thereto, and against accidental injuries including the granting, purchasing and paying of annuities and indemnities and to transact fidelity insurance and corporate suretyship. An insurance company incorporated under the provisions of this chapter shall have power to make insurance of any of the kinds hereinbefore mentioned which shall have been expressed in its articles of incorporation. (R. C. 1905, § 4419.)

§ 4837. ARTICLES. CONTENTS.] The articles of incorporation shall set forth in addition to what is required to be set forth in section 4505 the kind of insurance proposed to be made and whether on the stock or mutual plan, the period for the commencement and termination of its fiscal year and the period for which it is incorporated, not to exceed thirty years, and shall be filed in the office of the commissioner of insurance. Any name not previously in use

by an existing corporation may be adopted, but the words "insurance company," or, if the business is to be conducted upon the mutual principle, the words "mutual insurance company" shall constitute a part of such name. No certificate shall be granted by the insurance commissioner, as hereinafter provided, if, in his judgment, the name adopted too closely resembles the name of an existing corporation, or is liable to mislead the public. (R. C. 1905, § 4420.)

§ 4838. QUALIFICATION OF DIRECTORS. RESIDENCE.] One-third of the directors and all of the executive officers of a domestic insurance company must be residents of this state and each of the directors of such a company, if it has a capital stock, must be the owner in his own right of stock of such company worth at par at least five hundred dollars. (R. C. 1905, § 4421.)

§ 4839. EXAMINATION OF ARTICLES BY ATTORNEY GENERAL. EXAMINATION BY COMMISSIONER OF INSURANCE. CERTIFICATE.] The articles of incorporation shall be examined by the attorney general and if found conformable to this article and not inconsistent with the constitution and laws of this state, shall be certified by him to the commissioner of insurance, who shall thereupon make an examination to ascertain whether the company has in all respects complied with the requirements of law, according to the nature of the business proposed to be transacted by it and if satisfied by such examination that the corporation has complied with the law he shall deliver to such corporation a certified copy of the articles of incorporation and a certificate to the effect that such corporation has complied with all requirements of law, which, on being filed in the office of the register of deeds of the county where the principal office of the corporation is located, shall be its authority to commence business and issue policies; and such certified copy of the articles of incorporation and of such certificate may be used for or against such company with the same effect as the originals, and shall be conclusive evidence of the fact of the organization of such corporation. (R. C. 1905, § 4422.)

Taking of applications in mutual insurance company is necessary step in formation, and is required to be done before issuance of a certificate to commence business. *Montgomery v. Harker*, 9 N. D. 527, 84 N. W. 369.

§ 4840. REINSURANCE.] Any domestic insurance company shall have power to effect reinsurance of any risks taken by it. (R. C. 1905, § 4423.)

Liability of reinsurer. 44 L. R. A. (N. S.) 317.

§ 4841. LIMITATION ON TRADE.] No company organized under this chapter shall, directly or indirectly, deal or trade in buying or selling any goods, wares, merchandise or other commodities whatever, except such as may have been insured by such company and are claimed to be damaged by reason of the risk insured against. (R. C. 1905, § 4424.)

§ 4842. LIMITATION ON PURCHASE AND CONVEYANCE OF REAL ESTATE.] No domestic insurance company shall purchase, hold or convey real estate except for the purpose and in the manner herein set forth, to-wit:

1. Such as shall be requisite for its convenient accommodation in the transaction of its business; or,

2. Such as shall have been mortgaged to it in good faith as security for loans previously contracted, or for money due; or,

3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in legitimate business, or for money due; or,

4. Such as shall have been purchased at sales upon judgment or mortgage foreclosures obtained or made for such debts. (R. C. 1905, § 4425.)

§ 4843. CAPITAL AND SURPLUS INVESTED.] A domestic insurance company may invest its capital, and the funds accumulated in the course of its business, or any part thereof, in bonds or mortgages on improved unincumbered real estate within this state, or within any state in which such company is or becomes duly authorized and licensed to transact business, worth double the sum loaned thereon, exclusive of buildings, unless such buildings are insured and the policies made payable to the company as its interest may appear, and also in the bonds of the state, or bonds or treasury notes of the United States, and also in the bonds of any county or incorporated city or school district in this state, or within any state in which said company is or becomes duly authorized and licensed to transact business, authorized to be issued by legal authority, and loan such capital and funds, or any part thereof, on the security of such bonds, treasury notes, or upon bonds or mortgages as aforesaid, and change and re-invest the same in like securities as occasion may from time to time require; but the surplus money over and above the capital stock of such insurance company may be invested in or loaned upon the pledge of bonds of the United States or any of the state, or stocks, bonds, or other evidence of indebtedness of any solvent dividend paying institution incorporated under the laws of this state, or of any state in which such company is or becomes duly authorized and licensed to transact business, or of the United States, except its own stock; provided always, that the market value of such stock, bonds or other evidence of indebtedness shall be at all times during the continuance of such loan at least ten per cent. more than the amount loaned thereon. No domestic insurance company shall invest or loan its capital, or the funds accumulated in the course of its business, or any part thereof, except as provided in this section. (R. C. 1905, § 4426.)

§ 4844. DIVIDENDS ONLY FROM SURPLUS PROFITS. PROFITS, HOW ESTIMATED.] No domestic insurance company shall make any dividends except from the surplus profits arising from its business; and in estimating such profits there shall be reserved therefrom a sum equal to forty per cent. of the amount of premiums on all unexpired risks and policies, which amount so reserved, is hereby declared to be unearned premiums; and there shall also be reserved all sums due the company on bonds, mortgages, stocks and book accounts of which no part of the principal or interest thereon has been paid during the year preceding such estimate of the profits, and upon which suit for foreclosure or collection has been commenced, or which after judgment has been obtained thereon shall have remained more than one year unsatisfied and on which interest shall not have been paid. (R. C. 1905, § 4427.)

§ 4845. PENALTY FOR VIOLATION OF SECTION 4843.] Any director or officer making or authorizing an investment or loan in violation of section 4843 shall be personally liable to the stockholders for any loss occasioned thereby. If a company is under liability for losses equal to its net assets and the president and directors, knowing it, make or assent to further insurance, they shall be personally liable for any loss under such insurance. If the directors allow

to be insured on a single risk a larger sum than the law permits they shall be liable for any loss thereon above the amount they might lawfully insure, unless the excess is reinsured as required in section 4914. (R. C. 1905, § 4428.)

ARTICLE 3—DOMESTIC LIFE INSURANCE COMPANIES TO DEPOSIT SECURITIES
WITH INSURANCE COMMISSIONER.

§ 4846. ANNUAL STATEMENT.] The president or vice-president and secretary or actuary or a majority of the directors of each company organized under the laws of this state shall annually, by the first Monday in February, prepare under oath and file in the office of the commissioner of insurance a statement of its affairs for the year terminating on the thirty-first day of December, preceeding, showing:

1. The name of the company and where located.
2. The names of its officers.
3. The amount of capital, if a stock company.
4. The amount of capital paid in, if a stock company.
5. The value of real estate owned by the company.
6. The amount of cash on hand.
7. The amount of cash deposited in banks, giving the name of the bank or banks.
8. The amount of cash in the hands of agents and in the course of trans-
mission.
9. The amount of bonds of the United States, and all other bonds and securities, giving names and amounts, with the par and market value of each kind.
10. The amount of loans secured by first mortgage on real estate and where such real estate is situated.
11. The amount of all other bonds, loans, how secured, and the rate of interest.
12. The amount of premium notes and their value on policies in force, if a mutual company.
13. The amount of notes given for unpaid stock, and their value in detail, if a stock company.
14. The amount of assessments unpaid on stock or premium notes.
15. The amount of interest due and unpaid.
16. The amount of all other securities.
17. The amount of losses due and unpaid.
18. The amount of losses adjusted but not due.
19. The amount of losses unadjusted.
20. The amount of claims for losses resisted.
21. The amount of money borrowed and evidences thereof.
22. The amount of dividends unpaid on stock.
23. The amount of dividends unpaid on policies.
24. The amount required to safely reinsure all outstanding risks.
25. The amount of all other claims against the company.
26. The amount of net cash premiums received.
27. The amount of notes received for premiums.
28. The amount of interest received from all sources.
29. The amount of moneys received from all other sources.

30. The amount paid for losses.
31. The amount of dividends paid to policy holders, and the amount to stockholders, if a stock company.
32. The amount of commissions and salaries paid to agents.
33. The amount paid to officers for salaries and other compensation.
34. The amount paid for taxes.
35. The amount of all other payments and expenditures.
36. The greatest amount insured on any one life.
37. The amount deposited in other states or territories as security for policy holders therein, stating the amount in each state or territory.
38. The amount of premiums received in this state during the year.
39. The amount paid for losses in this state during the year.
40. The whole number of policies issued during the year, with the amount of insurance effected thereby, and total amount of risk.
41. All other items of information necessary to enable the commissioner of insurance to correctly estimate the cash value of policies or to judge of the correctness of the valuation thereof. (1909, Ch. 150, § 1.)

§ 4847. COMMISSIONER ASCERTAINS VALUE OF POLICIES. SECURITIES TO BE DEPOSITED.] As soon as practicable after the filing of such statement the insurance commissioner shall ascertain the net cash value of every policy in force upon the basis of the American table of mortality and four and one-half per cent. interest, or actuaries combined experience table of mortality and four per cent. interest, in all companies organized under the laws of this state. The company may make such valuation and make and file the same with such annual statement, and it shall be received by the insurance commissioner upon satisfactory proof of its correctness. The net cash value of all policies in force in any such company being ascertained, the insurance commissioner shall notify it of the amount, and within thirty days thereafter, the officers thereof shall deposit with the insurance commissioner the amount of the ascertained value in the securities specified in chapter 156 of the session laws of 1907 (sections 4861, 4862, herein); provided, however, that no stock company organized under the laws of this state shall be required to make a deposit of such securities in an amount exceeding one hundred thousand dollars; and when securities in that amount shall have been deposited then such insurance company may, and the insurance commissioner shall accept in lieu of further deposit, a detailed, verified statement setting forth a list of the items of security held by such insurance company with sufficient particularity; and such securities so specified in such list, although retained by such insurance company, shall be kept separate and distinct from its other securities and shall be held as a deposit for the policy holders of said company under the provisions of this section.

The insurance commissioner may at any time make a personal examination of the books, papers, securities and business of any such life insurance company or authorize any other suitable person to make the same, and he or the person so authorized may examine under oath any officer or agent of the company, or others, relative to its business and management. If upon such examination the insurance commissioner is of the opinion that the company is insolvent, or that its condition is such as to render a further continuance of its

business hazardous, then the insurance commissioner may require such insurance company to forthwith deposit in his office all of such securities so listed and specified in said list, and not deposited; provided, however, that nothing herein contained shall be construed as preventing or prohibiting any domestic life insurance company from depositing such securities in an amount to exceed the cash value of its policies. (1909, Ch. 150, § 2.)

§ 4848. CERTIFICATE OF AUTHORITY.] On receipt of such deposit and statement and such detailed list of securities provided for in the preceding section, all of which shall be renewed annually, by the first Monday in February, the insurance commissioner shall issue a certificate to the effect that such insurance company does business under the compulsory reserve deposit law of the State of North Dakota, and maintains, in accordance with section 2 of said law, in the office of the insurance commissioner of the State of North Dakota, a deposit of an amount in excess of the net cash value of all outstanding policies in stipulated and high-class securities, deposited for the protection of the policy holders of said company, which certificate shall expire on the thirty-first day of March of the ensuing year. Such certificate shall be renewed annually upon a renewal of the deposit or statement provided for under the preceding sections, and upon compliance with the conditions above required. The insurance commissioner shall receive the sum of five dollars for issuing such certificate; provided, that a copy of such certificate may be attached to any policy of insurance hereafter or heretofore issued by any life insurance company organized under the laws of this state, upon its compliance with the provisions of this act. (1909, Ch. 150, § 3.)

§ 4849. ON DEFAULT SECURITIES VEST IN POLICY HOLDERS.] The securities of a defaulting or insolvent company or a company against which proceedings are pending for dissolution, on deposit shall vest in the state for the benefit of the policies on which such deposit is made or were made, and the proceeds of the same shall, by order of the court upon final hearing be divided among the holders thereof in the proportion of the last annual valuation of the same, or at any time be applied to the purchase of reinsurance for their benefit. (1909, Ch. 150, § 4.)

§ 4850. SECURITIES MAY BE EXCHANGED.] Companies shall have the right at any time to change the securities on deposit by substituting a like amount of the character required in the first instance. If the annual valuation of the policies in force shows them to be less than the amount of the security deposited, then the company may withdraw such excess, but twenty-five thousand dollars must always remain on deposit. (1909, Ch. 150, § 5.)

§ 4851. DIVIDENDS ON SECURITIES PROPERTY OF COMPANY.] Companies having on deposit with the insurance commissioner bonds or other securities may collect the dividends or interest thereon, delivering to their authorized agents the coupons or other evidence of interest as the same become due, but if any company fails to deposit additional securities when and as called for by the insurance commissioner, or pending any proceedings to close up or enjoin it, the insurance commissioner shall collect such dividends or interest and add the same to such securities. (1909, Ch. 150, § 6.)

§ 4852. EXCEPTION TO ACT.] None of the provisions of this act shall apply to fraternal beneficiary associations. (1909, Ch. 150, § 7.)

ARTICLE 4—MISREPRESENTATION BY INSURANCE COMPANIES.

§ 4853. PROHIBITED.] No life insurance company doing business in this state, and no officer, director or agent thereof, shall issue or circulate, or cause or permit to be issued or circulated, any estimate, illustration, circular or statement of any sort misrepresenting the terms of any policy issued by it or the benefits or advantages promised thereby, or the dividends or shares of surplus to be received thereon, or shall use any name or title of any policy or class of policies misrepresenting the true nature thereof. (1907, Ch. 147, § 1.)

§ 4854. PENALTY.] An officer, agent, solicitor or any representative of any life insurance company violating the provisions of this act, shall be deemed guilty of a misdemeanor. Any life insurance company found guilty of a violation of the provisions of this act by the commissioner of insurance upon a hearing, after fifteen days' notice, shall be subject to a penalty to be by such commissioner of insurance imposed, of not to exceed \$500, in default of the payment of which he is authorized to revoke the license of such company; and provided, that upon a second conviction upon a similar hearing the commissioner of insurance shall revoke the license of such company to transact business in the state. (1907, Ch. 147, § 2.)

ARTICLE 5—DISCRIMINATION BY LIFE INSURANCE COMPANIES.

§ 4855. PROHIBITED.] No life insurance company doing business in this state shall make or permit any distinction or discrimination in favor of individuals between insureds (the insured) of the same class and equal expectation of life in the amount or payment of premiums or rates charged for policies of life or endowment insurance, or to the dividends or other benefits payable thereon, or in any other of the terms or conditions of the contracts it makes, nor shall any such company or agent thereof make any contract of insurance or agreement as to such contract other than as plainly expressed in the policy issued thereon, nor shall any such company or any officer, agent, solicitor or representative thereof, pay, allow or give, or offer to pay, allow or give, directly or indirectly as inducement to insurance, any rebate or premium payable on their policy, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any paid employment or contract for services of any kind or any valuable consideration or inducement whatever not specified in the policy contract of insurance, or give, sell or purchase, or offer to give, sell or purchase as inducement to insurance or connection therewith any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits to accrue thereon or anything of value whatsoever not specified in the policy. (1907, Ch. 148, § 1.)

Power of legislature to regulate life insurance rates; 37 L. R. A. (N. S.) 778.

§ 4856. PENALTY.] Any officer, agent, solicitor or any representative of any life insurance company violating the provisions of this act shall be deemed guilty of a misdemeanor. Any life insurance company found guilty of a violation of the provisions of this act by the commissioner of insurance upon a hearing, after fifteen days' notice, shall be subject to penalty to be by such commissioner of insurance imposed, of not to exceed \$500, in default of the

payment of which he is authorized to revoke the license of such company; and provided, that upon a second conviction upon a similar hearing the commissioner of insurance shall revoke the license of such company to transact business in the state. (1907, Ch. 148, § 2.)

ARTICLE 6—DISBURSEMENTS BY LIFE INSURANCE COMPANIES.

§ 4857. VOUCHER REQUIRED.] No domestic life insurance company shall make any disbursements of one hundred dollars or more unless the same be evidenced by a voucher signed by or in behalf of the person, firm or corporation receiving the money and correctly describing the consideration for the payment. If the expenditure be for both services and disbursements the voucher shall set forth the services rendered and an itemized statement of the disbursements made. If the expenditure be in connection with any matter pending before any legislative or public body, or before any department or officer of any state or government, the voucher shall correctly describe, in addition, the nature of the matter and of the interest of such company therein. When such voucher cannot be obtained the expenditure shall be evidenced by an affidavit describing the character and object of the expenditure and stating the reason for not obtaining such voucher. (1907, Ch. 149.)

ARTICLE 7—DIVERSION OF FUNDS FOR POLITICAL PURPOSES BY LIFE INSURANCE COMPANIES.

§ 4858. UNLAWFUL TO AID POLITICAL PARTIES. PENALTY.] No insurance company or association, including fraternal beneficiary associations, doing business in this state, shall, directly or indirectly, pay or use or offer, consent or agree to pay or use any money or property for or in aid of any political party, committee or organization, or for or in aid of any corporation, joint stock or other associations, organized or maintained for political purposes, or for or in aid of any candidate for political office, or for nomination for such office, or for any political purpose whatsoever, or for the reimbursement or indemnification of any person for money or property so used. Any officer, director, stockholder, attorney or agent of any corporation or association which violates any of the provisions of this act, who participates in, aids, abets, or advises or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of this act, shall be guilty of a misdemeanor and be punished by imprisonment for not more than one year and a fine of not more than one thousand dollars, and any officer aiding or abetting in any contribution made in violation of this act, shall be liable to the company or association for the amount so contributed. No person shall be excused from attending and testifying or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial for a violation of any of the provisions of this act, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to incriminate or degrade him; but no person shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be used against him upon any criminal investigation or proceeding. (1907, Ch. 52.)

ARTICLE 8—SALARIES OF OFFICERS AND AGENTS OF LIFE INSURANCE COMPANIES.

§ 4859. EXPENSES OF OFFICERS, HOW REGULATED.] No domestic life insurance company shall pay any salary, compensation or emolument to any officer, trustee or director thereof, nor any salary, compensation or emolument amounting in any one year to more than five thousand dollars to any one person, firm or corporation unless such payment be first authorized by a vote of the board of directors of such life insurance company. No such life insurance company shall make any agreement with any of its officers, trustees or salaried employes whereby it agrees that for services rendered or to be rendered he shall receive any salary, compensation or emolument that will extend beyond a period of twelve months from the date of such agreement; and no officer, director or trustee, who is paid a salary for his services of more than one hundred and fifty dollars per month, shall receive any other compensation or emolument; provided, that the limitation as to time contained herein shall not be construed as preventing a life insurance company from entering into contracts with its agents for the payment of renewal commissions. No such company shall grant any pension to any officer, director or trustee thereof or to any member of his family after his death. (1907, Ch. 154, § 1.)

ARTICLE 9—INVESTMENT OF FUNDS OF LIFE INSURANCE COMPANIES.

§ 4861. INVESTMENT OF FUNDS RESTRICTED.] No domestic life insurance company, whether incorporated by special act or under a general law, shall, after the first day of January, 1908, invest in or loan upon any shares of stock of any corporation, other than a municipal corporation; nor, excepting government, state or municipal securities, shall it invest in or loan upon, any bonds or obligations not secured by adequate collateral security, and when more than one-third of the total value of the collateral security shall consist of shares of stock it shall be deemed inadequate. Every such company possessed of stocks or securities prohibited by this act shall dispose of the same within five years, unless such time is extended by the commissioner of insurance. No investment or loan, except policy loans, shall be made by any such life insurance company unless the same shall first have been authorized by the board of directors or by a committee thereof charged with the duty of supervising such investment or loan. No such company shall subscribe to or participate in any underwriting of the purchase or sale of securities or property, or enter into any transaction for such purchase or sale on account of said company jointly with any other person, firm or corporation; nor shall any such company enter into any agreement to withhold from sale any of its property, but the disposition of its property shall be at all times within the control of its board of directors. Any such company, in addition to other investments allowed by law, may invest any of its funds and accumulations in the bonds of the United States or of this state or of any county, city, town or village or duly organized school district therein, or of any municipality or civil division of any state, and may loan upon improved unincumbered real property in any state fifty per centum of the value of such property, or invest in the mortgage bonds of any dividend paying railway or street railway company duly incorporated and organized under the authority of this state or any other state, and it may also make loans on the security of promissory notes amply secured by pledge of any bonds in which

such insurance companies are hereby authorized to invest their funds, and may also make loans upon the security of its own policies, but no loan on any policy shall exceed the reserve value thereof. (1907, Ch. 156, § 1.)

§ 4862. HOLDING OF REAL PROPERTY LIMITED.] Every such life insurance company may acquire, hold and convey real property only for the following purposes and in the following manner:

First. Such as shall be requisite for the convenient accommodation in the transaction of its business.

Second. Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted or for moneys due.

Third. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

Fourth. Such as shall have been purchased at sales on judgments, decrees or mortgages obtained or made for such debts.

All such property specified in sub-divisions two, three and four of this section which shall not be necessary for its accommodation in the convenient transaction of its business, shall be sold and disposed of within two years after the company shall have acquired title to the same, or within two years after same shall have ceased to be necessary for the accommodation of its business; and it shall not hold such property for a longer period unless it shall procure a certificate from the commissioner of insurance that its interests will suffer materially by the forced sale thereof, in which event the time for sale may be extended to such time as the commissioner shall direct in such certificate. (1907, Ch. 156, § 2.)

ARTICLE 10—PROVISIONS PECULIAR TO DOMESTIC STOCK INSURANCE COMPANIES.

§ 4863. CAPITAL STOCK REQUIRED.] No stock company shall be incorporated under this chapter unless it has a capital stock of at least \$100,000, twenty-five per cent. of which must be paid in previous to the issuance of any policy and the residue within twelve months from the time of filing the articles of incorporation; provided, that the commissioner of insurance may for good cause shown extend the time of payment of such residue for the further period of not to exceed one year. No fire, cyclone, tornado, hail, marine, life, or accident insurance company of any other state, territory or nation shall do business in this state unless it has a paid up capital stock of at least one hundred thousand dollars in available cash assets, over and above all liabilities for losses reported, expenses, taxes and reinsurance of all outstanding risks. (1911, Ch. 160; 1909, Ch. 147; R. C. 1905, § 4429.)

§ 4864. OPENING BOOK FOR SUBSCRIPTIONS.] The individuals associated for the purpose of organizing an insurance company under this article, after having filed the articles of incorporation as required by section 4837, may open books for subscriptions to the capital stock of such corporation and keep the same open until the full amount specified in the articles of incorporation is subscribed. (R. C. 1905, § 4430.)

§ 4865. NOTICE TO COMPANY WHEN CAPITAL STOCK IS IMPAIRED.] Whenever it appears to the commissioner of insurance that the capital stock of a domestic insurance company is impaired to the extent of one-fourth or more on the basis fixed in section 4844 he shall notify the company that its capital

is legally subject to be made good in the mode provided by section 4866, and if such company shall not within three months after such notice satisfy him that it has fully repaired its capital or reduced its capital as provided in section 4867, he shall institute proceedings against it in accordance with section 4925. (R. C. 1905, § 4431.)

§ 4866. HOW CAPITAL MADE GOOD. FORFEITURE OF SHARES.] Whenever the net assets of the company do not amount to more than three-fourths of its original capital, it may make good its original capital to the original amount by assessment of its stock. Shares on which such an assessment is not paid within sixty days after demand shall be forfeitable and may be canceled by a vote of the directors and new shares issued to make up the deficiency. If such company shall not within three months after notice from the commissioner of insurance to that effect make good its capital as aforesaid, or reduce the same as allowed by the next section, its authority to transact new business of insurance shall cease. (R. C. 1905, § 4432.)

§ 4867. CAPITAL STOCK REDUCED. EXAMINATION AND CERTIFICATE OF COMMISSIONER.] When the capital stock of a company is impaired, such company may upon a vote of a majority of the stock represented at a meeting legally called for that purpose, reduce its capital stock and the number of shares thereof to an amount not less than the minimum sum required by law. But no part of its assets and property shall be distributed to its stockholders. Within ten days after such meeting the company shall submit to the insurance commissioner a certificate setting forth the proceedings thereof and the amount of such reduction and the assets and liabilities of the company, signed and sworn to by its president, secretary and a majority of its directors. The commissioner shall examine the facts in the case, and if the same conform to law, and in his judgment the proposed reduction may be made without prejudice to the public he shall indorse his approval upon the certificate. Upon filing the certificate so indorsed the company may transact business upon the basis of such reduced capital, as though the same was its original capital, and its articles of incorporation shall be deemed to be amended to conform thereto; and the commissioner of insurance shall issue his certificate to that effect. Such company may by a majority vote of its directors after such reduction require the return of the original certificates of stock held by each stockholder in exchange for new certificates in lieu thereof for such number of shares as each stockholder is entitled to in the proportion that the reduced capital bears to the original capital. (R. C. 1905, § 4433.)

§ 4868. CAPITAL LESS THAN LIABILITIES. NOTICE NOT TO ISSUE POLICIES.] When the actual funds of a domestic life insurance company exclusive of its capital, are not of a net cash value equal to its liabilities the commissioner of insurance shall notify such company and its agents to issue no new policies until its funds become equal to its liabilities. (R. C. 1905, § 4434.)

§ 4869. TRANSFER OF STOCK PENDING EXAMINATION DOES NOT RELEASE LIABILITIES.]. No transfer of the stock of any domestic insurance company made during the pendency of any examination will release the party making the transfer from his liability for loss which may have occurred previous to the transfer. (R. C. 1905, § 4435.)

ARTICLE 11—PROVISIONS PECULIAR TO DOMESTIC MUTUAL INSURANCE COMPANIES.

§ 4870. AMOUNT OF SUBSCRIBED INSURANCE REQUIRED.] No policy shall be issued by a purely mutual insurance company until not less than two hundred thousand dollars of insurance in not less than one hundred separate risks have been subscribed for and entered on its books; but the provisions of this section shall not apply to county mutual insurance companies. (R. C. 1905, § 4436.)

As to taking applications for \$200,000 of insurance before issuance of policy in mutual societies. *Montgomery v. Whitbeck*, 12 N. D. 385, 96 N. W. 327.

§ 4871. INSURED A MEMBER. NOTICE OF MEETINGS.] Every person insured by a domestic mutual insurance company, other than life, shall be a member while his policy is in force, entitled to one vote for each policy he holds, and shall be notified of the time and place of holding its meetings by a written notice or by an imprint upon the back of each policy, receipt or certificate of renewal as follows, to-wit:

The assured is hereby notified that by virtue of this policy he is a member of the.....mutual insurance company, and that the annual meetings of such company are held at its home office on the day of.....in each year at.....o'clock.

The blanks shall be duly filled and the same shall be deemed a sufficient notice. (R. C. 1905, § 4437.)

§ 4872. SAME.] Every person insured by a domestic mutual life insurance company shall be a member entitled to one vote and one vote additional for each five thousand dollars of insurance in excess of the first five thousand dollars, and shall be notified of its annual meetings in the manner provided in the last section. (R. C. 1905, § 4438.)

§ 4873. MANNER OF VOTING BY PROXY.] Members may vote by proxy dated and executed within three months and returned and recorded on the books of the company three days or more before the meeting at which they are to be used; but no person shall be allowed as proxy or otherwise to cast more than fifty votes, and no officer shall himself, or by another, ask for, receive, procure to be obtained or use a proxy vote; provided, that this section shall not apply to state mutual hail insurance companies. (R. C. 1905, § 4439.)

§ 4874. PREMIUM. CONTINGENT LIABILITY STATED ON POLICY.] Mutual insurance companies shall charge and collect upon their policies the full mutual premium in cash or notes, and may by their by-laws fix the contingent mutual liability of its members for the payment of losses and expenses not provided for by their cash funds; provided, that such contingent liability of a member shall not be less than a sum equal to, and in addition to the cash premium written in his policy; provided, further, that in case said premium be not so paid in cash or unconditional notes within sixty days from the date of issue, the policy shall become and be absolutely void and to remain void during the non-payment of such premium, and upon payment of the premium as above provided, such policy shall re-attach; provided, there has been no loss while the policy was void. The total amount of the liability of a policy holder shall be clearly and legibly stated upon the back of each policy. (1907, Ch. 143; R. C. 1905, § 4440.)

As to validity of insurance contract made with company which violated the statute. *Walker v. Rein*, 14 N. D. 608, 106 N. W. 405.

As to requirements that amount of accepted cash premium should be written in policy of insurance. *Montgomery v. Whitbeck*, 12 N. D. 385, 96 N. W. 327.

§ 4875. RESERVE FUND, HOW USED.] Any mutual insurance company may at a meeting called for that purpose provide for the accumulation of a permanent fund by reserving a portion of the net profits to be invested and be a reserve for the security of the insured. Such reservation shall not exceed twenty per cent. of said net profits and when the fund so accumulated amounts to two per cent. of the sum insured by all policies in force the whole of the net profits shall be divided among the insured at the expiration of their policies. The permanent fund so accumulated shall be used for the payment of losses and expenses, whenever the cash funds of the company in excess of an amount equal to its liabilities are exhausted; and whenever the said fund is drawn upon, reservation of profits as aforesaid shall be renewed or continued until the limit of accumulation as herein provided is reached. (R. C. 1905, § 4441.)

§ 4876. TEMPORARY CAPITAL MAY BE RETIRED.] A mutual life insurance company may be organized with, and an existing mutual life insurance company may establish a temporary capital of not less than \$100,000, which shall be invested in the same manner as is provided for the investment of its other funds. Out of the net surplus of the company the holders of the temporary capital stock may receive a dividend of not more than eight per cent. per annum, which may be cumulative. Such capital stock shall not be a liability of the company except that it shall be retired as soon as, but not before the surplus of the company remaining after its retirement shall not be less than the temporary capital so established. At the time for the retirement of such capital stock the holders shall be entitled to receive from the company the par value thereof and any dividends thereon due and unpaid, and thereupon the stock shall be surrendered and canceled, and the right to vote thereon shall cease. (1907, Ch. 144.)

§ 4877. MEMBERS ENTITLED TO SHARE OF NET PROFITS.] Every member of a mutual insurance company, except a mutual life insurance company, when his policy expires shall be entitled to be paid in cash his share of the net profits or surplus accrued while his policy was in force; and shall in like manner be liable to pay his proportionate part of any assessments, which may be laid by the company in accordance with law and his contract on account of losses and expenses incurred while he was a member. (R. C. 1905, § 4442.)

Liability of members of mutual insurance company. 32 L. R. A. 481.

Jurisdiction of equity to enforce liability of member of mutual insurance company. 40 L. R. A. (N. S.) 781.

§ 4878. DISTRIBUTION OF SURPLUS ON LIFE POLICIES.] Every domestic mutual life insurance company shall annually, or once in every two, three, four or five years, as it shall determine, and as may be conditioned in its policies make distribution of all surplus it may have accumulated since its last dividend of surplus. By such surplus is here intended all accumulations since its last distribution of surplus above its debts and reserve computed as provided in section 4844. The distribution shall be upon what is known as the contribution

plan and each member upon whose policy no premium is overdue and unpaid shall be entitled to the amount contributed by his policy to such surplus. Policies which have become payable before the time when such distribution is made and after the date of the last previous distribution shall share in the same equitably and proportionally. (R. C. 1905, § 4443.)

§ 4879. ASSESSMENTS, WHEN AND HOW MADE.] Whenever a mutual insurance company other than life, is not possessed of cash funds above its reinsurance reserve sufficient for the payment of incurred losses and expenses it shall make an assessment for the amount needed to pay such losses and expenses upon its members liable to assessment therefor in proportion to their several liability. The company shall cause to be recorded in a book kept for that purpose the order for such assessment together with a statement which shall set forth the condition of the company at the date of the order, the amount of its cash assets and of the notes of its policy holders, or other contingent funds liable to the assessment, the amount the assessment calls for and the particular losses or other liabilities it is made to provide for. Such record shall be made and signed by the directors who voted for the order before any part of the assessment is collected and any person liable to the assessment may inspect and take a copy of the same. (R. C. 1905, § 4444.)

§ 4880. MAKING PREMIUM RESERVE GOOD. SINGLE ASSESSMENT. CANCELLATION OF POLICIES. DOUBLE ASSESSMENTS. REINSURANCE.] When by reason of depreciation or loss of funds, or otherwise, the cash assets of such a company after providing for its other debts are less than the required premium reserve upon its policies it shall make good the deficiency by assessment in the mode provided in the last section; or, if the directors are of the opinion that the company is likely to become insolvent they may, instead of such assessment, make two assessments, the first determining what each policy holder must equitably pay or receive in case of withdrawal from the company and having his policy canceled, the second what further sum each must pay in order to reinsure the unexpired term of his policy at the same rate as the whole was insured at first. Each policy holder shall pay or receive according to the first assessment and his policy shall then be canceled, unless he pays the further sum determined by the second assessment, in which case his policy shall continue in force; but in neither case shall a policy holder receive or have credited to him more than he would have received on having his policy canceled by a vote of the directors under the by-laws. If within two months after such alternative assessments have become collectible the amount of the policies whose holders have settled for both assessments is less than two hundred thousand dollars, the company shall cease to issue policies; and all policies whose holders have not settled for both assessments shall be void and the company shall continue only for the purpose of adjusting the deficiency or excess of premiums among the members and settling outstanding claims. No assessment shall be valid against a person who has not been duly notified thereof, within two years after the expiration or cancellation of his policy. (R. C. 1905, § 4445.)

§ 4881. DIRECTORS PERSONALLY LIABLE FOR NOT MAKING AND COLLECTING ASSESSMENTS.] If the directors of any mutual insurance company shall neglect or omit for the space of six months to lay and use reasonable diligence to collect any assessment they are required to make, they shall be personally

liable for all debts and claims then outstanding against the company, or that may accrue until such assessment is laid and put in process of collection. If the treasurer of such company unreasonably neglects to collect an assessment made by order of the directors and to apply the same to the payment of the claims for which it was made, he shall be personally liable to the party having such claims for the amount of the assessment; and he may repay himself out of any money afterwards received for the company on account of said assessment. (R. C. 1905, § 4446.)

ARTICLE 12—SURPLUS OF LIFE INSURANCE COMPANY.

§ 4882. SURPLUS APPORTIONED ANNUALLY.] Every life insurance company doing business in this state conducted on the mutual plan or in which policy holders are entitled to share in the profits or in which policy holders of life insurance heretofore issued, under the conditions of which the distribution of surplus is deferred to a fixed or specified time and contingent upon the policy being in force and the insured living at that time annually ascertain the amount of surplus to which all such policies as a separate class are entitled, and shall apportion to such policies as a class the amount of surplus so ascertained and carry the amount of such apportioned surplus, plus the actual interest earnings and accretions of such fund, as a distinct and separate liability to such class of policies on and for which the same was accumulated, and no company or any of its officers shall be permitted to use any part of such apportioned surplus fund for any purpose whatsoever other than for the express purpose for which the same was accumulated. (1909, Ch. 145, Par. 1; 1907, Ch. 142, Par. 1.)

§ 4883. EXCEPTION.] The preceding section shall not apply to industrial policies. (1909, Ch. 145, Par. 2.)

§ 4884. CONTINGENCY RESERVE.] Any life insurance company doing business in this state may accumulate and maintain in addition to the capital and surplus contributed by its stockholders and in addition to an amount equal to the net values of its policies, computed according to the laws of the jurisdiction under which it is organized, a contingency reserve not exceeding the following respective percentages of said net values, to-wit: When said net values are less than one hundred thousand dollars, twenty per centum thereof or the sum of ten thousand dollars, whichever is the greater; when said net values are greater than one hundred thousand dollars, the percentage thereof measuring the contingency reserve shall decrease one-half of one per centum for each one hundred thousand dollars of said net values up to one million dollars; one-half of one per centum for each additional one million dollars up to ten million dollars; one-half of one per centum for each additional two million five hundred thousand dollars up to twenty million dollars; one-half of one per centum for each additional five million dollars up to fifty million dollars; one-half of one per centum for each additional twenty-five million dollars up to seventy-five million dollars; and if said net values equal or exceed the past mentioned amount the contingency reserve shall not exceed five per centum thereof; provided, that as the net values of said policies increase and the maximum percentage measuring the contingency reserve decreases such corporation may maintain the contingency reserve already accumulated hereunder, although for the time being it may exceed the maximum percentage herein prescribed, but may not

add to the contingency reserve when the addition will bring it beyond the maximum percentage; provided, further, that for cause shown the commissioner of insurance may at any time from time to time permit any corporation to accumulate and maintain a contingency reserve in excess of the limit above mentioned for a prescribed period, not exceeding one year under any one permission, by filing in his office a decision stating his reasons therefor and causing the same to be published in his next annual report. This section shall not apply to any company doing exclusively a non-participating business. (1907, Ch. 142, Par. 2.)

§ 4885. RIGHTS OF POLICY HOLDERS.] Every policy holder shall on all participating policies hereafter issued be permitted annually to select the manner and method of the application of the surplus to be annually apportioned to his policy from among those set forth in the policy. All apportioned surplus not actually paid over to the insured, or applied in the reduction of current or future premiums or in the purchase of paid-up insurance or pure endowment additions, shall be credited to the assured and carried as an actual liability and be paid at the maturity of the policy. (1907, Ch. 142, Par. 3.)

§ 4886. AUTOMATIC INSURANCE.] In event of default in payment of any premium due on any policy, provided not less than three full years' premiums shall have been paid, there shall be secured to the insured without action on his part, either paid-up or extended insurance as specified in the policy, the net value of which shall be at least equal to the entire net reserve held by the company on such policy less two and one-half per centum of the amount insured by the policy and dividend additions, if any, and less any outstanding indebtedness to the company on the policy at the time of default. There shall be secured to the insured the right to surrender the policy to the company at its home office within one month after date of default for the cash value otherwise available for the purchase of the paid-up or extended insurance as aforesaid. (1907, Ch. 142, Par. 4.)

§ 4887. CONTRA AGREEMENT FORBIDDEN.] No agreement between the company and the policy holder or applicant for insurance shall be held to waive any of the provisions of this act. (1907, Ch. 142, Par. 5.)

ARTICLE 13—CONSOLIDATION AND REINSURANCE OF DOMESTIC INSURANCE COMPANIES.

§ 4888. CONSOLIDATION FORBIDDEN.] No company organized under the laws of this state to do business of life, accident or health insurance, either on the stock, mutual, stipulated premium, assessment, or fraternal plan, shall consolidate with any other company, or reinsure its risks, or any part thereof with any other company, or assume or reinsure the whole of or any portion of the risks of any other company, except as hereinafter provided, but nothing herein contained shall prevent any such company, organized on the stock or mutual plan, from reinsuring a fractional part of any risk. (1907, Ch. 150, Par. 1.)

Right of corporations to consolidate. 52 L. R. A. 369.

§ 4889. PETITION FOR CONSOLIDATION.] When any such company shall propose to consolidate with any other company, or to enter into any contract of reinsurance, it shall present its petition to the insurance commissioner of this state, setting forth the terms and conditions of such proposed consolida-

tion or reinsurance, and asking for the approval or of any modification thereof, which the commission hereinafter provided for may approve. (1907, Ch. 150, Par. 2.)

§ 4890. DUTY OF INSURANCE COMMISSIONER.] The insurance commissioner thereupon shall issue an order of notice requiring notice to be given by mail to each policy holder of such company, of the pending of such petition, and the time and place at which hearing thereon will be held, and shall publish the said order of notice and said petition in five newspapers for at least two weeks before the time appointed for the hearing upon said petition, and in one daily newspaper published at the capital of the state. (1907, Ch. 150, Par. 3.)

§ 4891. COMMISSION.] The governor, or in the event of his inability to act, some competent person resident of the state to be appointed by him, the attorney general and the insurance commissioner of this state, shall constitute a commission to hear and determine upon said petition. At the time and place fixed in said notice or at such time and place as shall be fixed by adjournment, the said commission shall proceed with the hearing and may make or order such examination into the affairs and condition of such company as it may deem proper. The insurance commissioner shall have the power to summon and compel the attendance and testimony of witnesses and production of books and papers before said commission. Any policy holder or stockholder of the company or companies so petitioning may appear before said commission and be heard in reference to said consolidation or reinsurance. Said commission if satisfied that the interests of the policy holders of such company or companies are properly protected, and that no reasonable objection exists thereto, may approve and authorize the proposed consolidation or reinsurance or may modify or change the terms and conditions thereof as may seem best for the interests of the policy holders, and said commission may make such order with reference to the distribution and disposition of the surplus assets of any such company thereafter remaining as shall be just and equitable to the policy holders. Such consolidation or reinsurance shall only be approved by the consent of all members of such commission, and it shall be the duty of said commission to safeguard the interests of the policy holders of any such company or companies proposing to consolidate or reinsure. (1907, Ch. 150, Par. 4.)

§ 4892. EXPENSES PAID.] All actual expenses and costs incident to proceedings under the provisions of this act shall be paid by the company or companies bringing said petition, and an itemized statement of the expenses and costs shall be filed with the insurance commissioner with a certified copy of the decision of the commission. No officer of any such company or companies, nor members of said commission, or employee of the state, shall receive any compensation, gratuity or otherwise, directly or indirectly, for in any manner aiding, promoting or assisting in such consolidation or reinsurance. (1907, Ch. 150, Par. 5.)

§ 4893. PENALTY FOR VIOLATION.] Any officers, director or stockholder of any such company or companies, or any member of such commission or employee of the state, violating or consenting to the violation of the provisions of this act shall be punished by a fine not less than five thousand dollars or imprisonment in the county jail for not less than one year, or both such fine and imprisonment, in the discretion of the court. (1907, Ch. 150, Par. 6.)

ARTICLE 14—PROVISIONS PECULIAR TO MUTUAL HAIL INSURANCE COMPANIES.

§ 4894. FOREIGN MUTUALS PROHIBITED. CONTRACTS VOID. PENALTY.] No foreign insurance company incorporated upon the mutual plan shall directly or indirectly, take any hail risk, or transact the business of hail insurance in this state. All contracts, notes, mortgages and other evidence of indebtedness made or taken in violation of this section are hereby declared void. (R. C. 1905, § 4447.)

§ 4895. PENALTY.] Any person who violates any of the provisions of section 4894 or who procures or induces another to do so is guilty of a misdemeanor. (R. C. 1905, § 4448.)

§ 4896. MUTUAL INSURANCE COMPANIES (ENGAGE) ENGAGED IN HAIL BUSINESS, WHEN.] No mutual insurance company hereafter organized under the laws of this state shall engage in the business of hail insurance in this state without first filing a bond in the office of the commissioner of insurance in the sum of twenty-five thousand dollars (\$25,000.00), said bond to be satisfactory in form and surety to the commissioner of insurance, and no mutual hail insurance company now or hereafter organized under the laws of any other state or county shall be admitted to engage in the business of hail insurance in this state without having net cash assets in the sum of one hundred thousand dollars (\$100,000.00) above its liabilities and without first depositing and thereafter keeping on deposit with the treasurer of this state the sum of twenty-five thousand dollars (\$25,000.00) in money, or first mortgage loans on real estate in the State of North Dakota or certificates of deposit issued by banks in North Dakota, both mortgage and certificate to be approved by the commissioner of insurance; said mortgages or deposits to be of the face value of twenty-five thousand dollars (\$25,000.00), the said bond and said deposit conditioned for the carrying of its contracts and obligations incurred by its policies. (Chap. 109, L. 1915.)

§ 4897. DUTIES OF STATE TREASURER.] Said money or securities so deposited shall be and remain in the hands of the treasurer of this state as a fund to secure the payment of all losses occurring under all policies or contracts for hail insurance, made by such company in this state, or covering property situated within the state. And the treasurer of this state shall not permit said deposit or any part thereof to be withdrawn by said company from his custody except as hereinafter provided. (R. C. 1905, § 4450.)

§ 4898. PENALTY.] If any such company hereafter organized under the laws of this state shall violate any of the provisions of this article, the charter of said company or association shall thereupon be forfeited and it shall be the duty of the attorney general, on complaint of the commissioner of insurance, to take all legal proceedings necessary to have such forfeiture enforced and such company dissolved and its affairs wound up. (R. C. 1905, § 4451.)

§ 4899. RELINQUISH BUSINESS, HOW.] When any such company or corporation, having made the deposit as herein provided, desires to relinquish the transaction of the business of hail insurance in this state and withdraw such deposit, and shall file with the commissioner of insurance an application, under the oath of its officers, stating that all its liabilities arising under the contracts or policies above mentioned are paid, the commissioner of insurance shall thereupon publish notice of such application in a newspaper published at the capital

of the state, twice a week for a period of three months, and after such publication, on his being satisfied by the exhibition of the books and papers of such company, and on examination by himself or a person appointed by him, that all liabilities under the policies or contracts herein mentioned have been fully paid and extinguished, the commissioner of insurance shall thereupon file a certificate to that effect with the treasurer of this state, who shall thereupon deliver such deposit to said company, or its assigns. If it shall appear from such application and examination that all the liabilities of such company have not been paid and extinguished, and that the amount of such deposit is more than equal to twice the amount of such remaining liabilities, the treasurer shall thereupon pay to such company, or its assigns, a part of such deposit, retaining an amount equal to twice the amount of the liabilities so remaining. (R. C. 1905, § 4452.)

§ 4900. COMPANIES COLLECT INTEREST.] So long as any deposit required by this article is kept good, and the depositing company is solvent, the state treasurer may permit the company to collect the interest on the securities so deposited, and from time to time to withdraw any such securities on depositing with him others of the value and character required by this article. (R. C. 1905, § 4453.)

§ 4901. PROCEEDINGS, WHO INSTITUTE.] Any insurance company which has made such deposit, or the commissioner of insurance in the name of the state, or any person entitled to the benefit of such deposit, may at any time institute in the district court of Burleigh county legal proceedings against this state and other parties properly joined therein to enforce, administer or terminate the trust created by such deposit. The process in such suits shall be served upon the insurance commissioner of this state, who shall appear and answer in its behalf, and he and the treasurer of this state shall perform such orders and decrees as the court may make therein. (R. C. 1905, § 4454.)

ARTICLE 15.—TIME WHEN HAIL INSURANCE POLICIES TAKE EFFECT.

§ 4902. TWENTY-FOUR HOURS AFTER APPLICATION TAKEN.] Every insurance company engaged in the business of insuring against loss by hail in this state, shall be bound, and the insurance shall take effect from and after twenty-four hours from the day and hour the application for such insurance has been taken by the authorized local agent of said company, and if the company shall decline to write the insurance upon receipt of the application, it shall forthwith notify the applicant and agent who took the application, by telegram, and in that event, the insurance shall not become effective. Provided, that nothing in this act shall prevent the company from issuing a policy on such application and putting the insurance in force prior to the expiration of said twenty-four hours. (1907, Ch. 177, Par. 1.)

§ 4903. No provision herein, however, shall apply to the State Hail Insurance Department. (1907, Ch. 177, Par. 2.)

ARTICLE 16—PROVISIONS PECULIAR TO FIDELITY INSURANCE COMPANIES.

§ 4904. FIDELITY INSURANCE AND CORPORATE SURETYSHIP. SOLE SURETY.] Any corporation organized under the laws of the State of North Dakota, or of any state of the United States, or of any foreign country, to transact the business of fidelity insurance and corporate suretyship, and authorized to do busi-

ness in this state, as hereinafter provided, may make contracts of insurance to guarantee the fidelity of persons holding positions of trust in private or public employment or responsibility, and may, if accepted and approved by the court, magistrate, obligee or person competent to approve such bond act as surety upon the official bond or undertaking of any person or corporation, to the United States, to the State of North Dakota, or to any county, city, town, school district, court, judge, magistrate or public officer, or to any corporation or association, public or private; and may also act as surety upon any bond or undertaking to any person or corporation conditioned upon the performance of any duty or trust, or for the doing or not doing of anything in such bond specified, and to indemnify against loss any person who is responsible as surety upon a written instrument or otherwise, for the performance of the officers of any office, employment, contract or trust. When by law two or more sureties are required upon any obligation, any corporation qualified as herein provided is authorized to insure, and it may act as sole surety thereon, and may be accepted as such by the court, magistrate or other officer or person authorized to approve of the sufficiency of such bond or undertaking. (R. C. 1905, § 4455.)

Certificate of corporation's authority to execute surety bond need not be annexed to undertaking. *Germantown Trust Co. v. Whitney*, S. D. 108, 102 N. W. 304.

§ 4905. ACCEPTANCE OF SUCH BOND.] Whenever any bond, undertaking, recognizance or other obligation is, by law, or the charter, ordinance, rules or regulations of any municipality, board, body, organization, court, judge, or public officer, required or permitted to be made, given, tendered or filed with any surety or sureties, and whenever the performance of any act, duty or obligation or the refraining from any act, is required or permitted to be guaranteed, such bond, undertaking, obligation, recognizance or guaranty may be executed by a surety company, qualified under this chapter; provided, that such execution by such company of such bond, undertaking, obligation, recognizance or guaranty, shall be in all respects a full and complete compliance with every requirement of every law, charter, ordinance, rule or regulation and such bond shall be valid and shall be accepted notwithstanding any requirement of law that such bond, undertaking, obligation, recognizance or guaranty shall be executed by one or more sureties, or that such sureties shall be residents or householders or freeholders, or either or both, or possess any other qualifications, and all courts, judges, heads of departments, boards, bodies, municipalities and public officers of every character, shall accept and treat such bond, undertaking, obligation, recognizance or guaranty when so executed by such company, as conforming to and fully and completely complying with every such requirement, and every such law, charter, ordinance, rule or regulation. (R. C. 1905, § 4456.)

Board of railroad commissioners may examine into sufficiency of bonds given by grain elevator operator and may for such purpose summon any witness before them that they please. *State ex rel Dakota Trust Co. v. Stutsman*, 24 N. D. 68, 139 N. W. 83.

§ 4906. EXPENSE OF BOND, HOW PAID.] Any receiver, assignee, guardian, trustee, committee, executor, administrator or other fiduciary required by law or ordered by any court or judge to give a bond or other obligation as such,

may include as a part of the lawful expense of executing his trust, such reasonable sum paid to a corporation authorized under the laws of this state so to do, for acting as surety on such bond, as may be allowed by the court in which the judge before whom he is required to account, not exceeding one per cent. per annum, or fraction thereof, on the amount of such bond, and in all actions and proceedings a party entitled to recover disbursements therein shall be allowed, and may tax and recover such sum paid such corporation for executing any bond, recognizance or undertaking therein, not less than five dollars, nor more than one per cent. per year, or fraction thereof, on the amount of the penalty or liability in such bond, recognizance or undertaking specified, while the same has been in force. (R. C. 1905, § 4457.)

§ 4907. MUST COMPLY WITH LAWS OF STATE.] Every corporation not organized under the laws of the State of North Dakota, to be qualified to act as surety or guarantor, must comply with the requirements of every law of this state applicable to such company, and to foreign insurance companies doing business, thereunder; must be authorized under the laws of the state wherein incorporated, and under its charter to be surety upon such bond, undertaking, recognizance or obligation, must have fully paid up and safely invested an unimpaired capital of at least two hundred thousand dollars; must have good and available assets exceeding its liabilities, which liabilities for the purpose of this article, shall be taken to be its capital stock, debts outstanding, and a premium reserve at the rate of fifty per centum of the current annual premiums on each outstanding bond or obligation of like character in force; must file with the commissioner of insurance a certified copy of its certificate of incorporation, a written application to be authorized to do business in this state, also with such application, and in each year thereafter, a statement, verified under oath, made up to December thirty-first preceeding, stating the amount of its paid up cash capital, particularizing each item of investment, the amount of premiums upon existing bonds, undertakings and obligations of like character in force upon which it is surety, the amount of liability for unearned portion thereof, estimated at the rate of fifty per centum of the current annual premiums on such bond, undertaking, recognizance and obligation in force, stating also the amount of debts outstanding, obligations of all kinds, and such further facts as may be by the laws of this state required of such company in transacting business therein; and if such company be organized under the laws of any other state than this state. it must have on deposit with a state officer of one of the states of the United States not less than one hundred thousand dollars in securities prescribed by law, deposited with and held by such officer for the benefit of the holders of its obligations. It must also, by a duly executed instrument, filed in his office, constitute and appoint the commissioner of insurance of this state and his successors, its true and lawful attorney, upon whom all process in any action or proceeding against it may be served, and therein must agree that any process which may be served upon its attorney shall be of the same force and validity as if served upon the corporation, and that the authority thereof shall continue in force irrevocable, so long as any liability of the company remains outstanding in this state. Service upon such attorney shall be deemed sufficient service upon the corporation. (R. C. 1905, § 4458.)

§ 4908. DOMESTIC SURETY COMPANIES.] Every corporation organized under the laws of this state, and for the purpose in whole or in part of transacting the business of fidelity or corporate suretyship, must comply with the provisions of chapter 31 of the civil code and section 4929, and upon such corporation filing in the office of the commissioner of insurance a certificate issued by the state treasurer, to the effect that such corporation has complied with the provisions of section 5207, together with a certified copy of its articles of incorporation, and the payment of the proper fees therefor, the commissioner of insurance shall issue to such corporation a certificate, and shall issue to its agents certificates as provided in section 4920, which certificate shall be issued yearly on the filing by such corporation of a statement of its condition as of December thirty-first of the year last ending. (R. C. 1905, § 4459.)

Board of railroad commissioners may examine into sufficiency of bonds given by grain elevator operator and may for such purpose summon any witness before them that they please. *State ex rel. Dakota Trust Co. v. Stutsman*, 24 N. D. 68, 139 N. W. 83.

§ 4909. CONCURRENT UNDERTAKINGS.] Whenever any bond, undertaking or other obligation is by law, or the charter, ordinances, rules and regulations of any municipality, board, body, organization, court or public officer, required or permitted to be made, given or filed as hereinbefore provided, and whenever the amount thereof is fixed by law or by the charter, ordinances, rules or regulations of any municipality, board, body, organization, court, judge or public officer, then two or more such bonds executed by corporations qualified under the laws of this state, and aggregating the amount so fixed or determined, may be accepted and shall be in all things treated as one bond or obligation, and in case of loss or liability thereunder, the amount of such loss or liability, chargeable against each such bond or undertaking, shall be the same proportion of the entire loss or liability, as such bond or obligation bears to the aggregate amount of the penalty or liability specified in all of such bonds, whether such proportion be stated therein or not. (R. C. 1905, § 4460.)

§ 4910. RELIEF FROM LIABILITY.] The surety, or the representative of any surety upon a bond of any officer or fiduciary, may apply by petition to the court wherein said bond is directed to be filed or which may have jurisdiction of the beneficiary thereunder, praying to be relieved from further liability thereon, and to require said officer or fiduciary to show cause why he should not account and said surety be relieved from such further liability as aforesaid, and the said principal be required to give a new bond, and thereupon and upon the filing of said petition, said court shall issue an order returnable at such time and place, and to be served in such manner as said court shall direct, and may restrain such officer or fiduciary from acting except in such manner as it may direct therein, to preserve the trust estate, and upon the return of such order to show cause, if the principal in the bond account in due form of law and file a new bond, duly approved; then said court must make an order releasing said surety filing the petition aforesaid from further liability upon the bond for any subsequent act or default of the principal, and in default of said principal this accounting and filing said new bond, the said court shall make an order directing such officer and fiduciary to account in due form of law within thirty days, and that if the trust fund or estate shall be found or

made good, or properly secured in the manner directed by the court, such company shall be discharged from any and all further liabilities as such for the subsequent acts or omissions of the said officer or fiduciary after the date of the said surety being so relieved or discharged, and discharging said trustee, officer or other fiduciary. (R. C. 1905, § 4461.)

§ 4911. REPORT OF TAXES.] Every foreign corporation doing business in this state, under the provisions of this article, shall, at the time of making the annual statement of business done as required by law, pay to the commissioner of insurance two and one-half per cent. of the gross premiums, fees or charges received in this state during the preceding year upon all bonds or undertakings written by it, for or in behalf of any person in this state, and only upon and after the payment of such sum, the commissioner of insurance shall issue the annual certificate provided by law. (R. C. 1905, § 4462.)

§ 4912. Any corporation organized under the laws of this state, or of any state or country, to transact the business of fidelity insurance and corporate suretyship, and authorized to do business in this state, which makes contracts of insurance guaranteeing the fidelity of persons holding positions of trust in public office, shall be held responsible to any person for any loss or damage which he may suffer by reason of any fraud or misrepresentation practiced upon him by such public official under the guise of or by virtue of his office. (1913, Ch. 193.)

ARTICLE 17—PROVISIONS PECULIAR TO FOREIGN INSURANCE COMPANIES.

§ 4913. CONDITIONS OF ADMISSION. ARTICLES AND STATEMENT FILED. MUST BE LEGALLY ORGANIZED. APPOINT COMMISSIONER ITS ATTORNEY FOR SERVICE. RESIDENT AGENTS.] No foreign insurance company shall directly or indirectly take any risk or transact the business of insurance in this state until:

1. It shall deposit with the insurance commissioner a certified copy of its articles of incorporation and a statement of its financial condition and business in such form and detail as he may require, signed and sworn to by its president and secretary or other proper officers.

2. It shall satisfy the insurance commissioner that it is fully and legally organized under the laws of its state or government to do the business it proposes to transact; that it has a fully paid up and unimpaired capital, exclusive of stockholders' obligations of any description, of an amount not less than is required by section 4863 and, if a mutual company, that its assets are not less than is required by section 4870, that such capital or net assets are well invested and immediately available for the payment of losses in this state; and that it insures on any single hazard a sum no larger than one-tenth of its net assets.

3. It shall by a duly executed instrument, filed in his office, constitute and appoint the commissioner of insurance and his successors its true and lawful attorney upon whom all process in any action or proceeding against it may be served and therein shall agree that any process which may be served upon its said attorney shall be of the same force and validity as if served on the company and that the authority thereof shall continue in force irrevocable so long as any liability of the company remains outstanding in this state. Service upon such attorney shall be deemed sufficient service upon the company. When-

ever process against any foreign insurance company, doing business in this state, shall be served upon the commissioner of insurance, he shall forthwith mail a copy of such process, postage prepaid, and directed to such company at its principal place of business, or if it is a foreign company, to its resident manager in the United States, or to such other person as may have been previously designated by it by written notice filed in the office of the commissioner of insurance. As a condition of valid and effectual service the plaintiff shall pay to the commissioner of insurance at the time of service the sum of two dollars, which the plaintiff shall recover as taxable costs if he shall prevail in his action. The commissioner shall keep a record of all such process which shall show the time and hour of service.

4. It shall appoint as its agents in this state only residents thereof. (R. C. 1905, § 4463.)

Failure of foreign corporation to comply with law as to doing business in state justifies direction of verdict against it in suit for breach of contract. *Chesley v. Soo Lignite Coal Co.*, 19 N. D. 18, 121 N. W. 73.

Restrictions on business of foreign insurance company. 24 L. R. A. 298.

Effect on insurance of non-compliance with statutory requirements as to recovery on the policy. 20 L. R. A. 405.

ARTICLE 18—PROVISIONS COMMON TO ALL INSURANCE COMPANIES.

§ 4914. LIMIT OF RISK.] No company organized under this chapter, or transacting business in this state shall expose itself to loss on any one risk or hazard to an amount exceeding ten per cent. of its paid up capital, exclusive of any guarantee, surplus, or special reserve fund, unless the excess shall be reinsured in some other good reliable company. (R. C. 1905, § 4464.)

Board of railroad commissioners may inquire into general business conduct and reliability of sureties on bonds given by grain elevator operator.

State ex rel. Dakota Trust Co. v. Stutsman, 24 N. D. 68, 139 N. W. 83.

§ 4915. ANNUAL STATEMENT, PUBLICATION THEREOF.] Every insurance company doing business in this state must transmit to the commissioner of insurance a statement of its condition and business for the year ending on the preceding thirty-first day of December, which shall be rendered not later than the first day of March in each year. Foreign insurance companies shall have until the following first day of December to transmit their statements of business, other than that taken in the United States. It shall be the duty of the insurance commissioner upon the date of the receipt of any such statement to stamp thereon the date of the receipt of such statement in his office, and the insurance commissioner is hereby prohibited from receiving such statement from any company after the day which is herein designated for the filing of such statement, unless the same be accompanied by the penalty by law provided for each day's delinquency in filing such statement. Such statements must be published at least three times in a newspaper of general circulation printed and published in each judicial district of the state in which such insurance company shall have an agency, provided, however, that the statements of state, county and town mutual insurance companies need only be published once in a newspaper selected at their annual meeting in the county wherein such company does business. Statements for publication shall be made out on blanks furnished by the commissioner of insurance and the certificate of authority

of the commissioner of insurance for the company to do business in this state shall be published in connection with such statement. Proof of publication shall be filed with the commissioner of insurance in all cases within four months from the time of such filing of the annual statement. Such publication shall be made at the authorized rate for publishing legal notices. The commissioner of insurance shall select three newspapers of general circulation published in each of the judicial districts from which such companies shall select one in which such statements shall be published. (1911, Ch. 159.)

§ 4916. CONTENTS OF ANNUAL STATEMENT.] The annual statement required by the last section must be in form and state particulars as follows:

1. The name of the company and where located.
2. The amount of capital stock actually paid in cash.
3. The property or assets of the company, specifying:
 - (a) The value, as nearly as may be, of the real estate owned by the company.
 - (b) The amount of cash on hand in the office.
 - (c) The amount of cash on deposit in banks.
 - (d) The amount of cash in the hands of agents and in course of transmission.
 - (e) The amount of loans secured by bonds and mortgages, being first lien on real estate worth double the amount of the sum loaned thereon.
 - (f) The amount of stocks and bonds owned by the company, specifying the amount, number of shares, and the market value of each kind of stock on the day of making the statement.
 - (g) The amount of stock held by it as collateral security for loans with the amount loaned on each kind of stock, the par value and market value thereof on the day the statement is made.
 - (h) The amount of all other sums due the company.
4. The liabilities of such company, specifying:
 - (a) The amount of losses unpaid.
 - (b) The amount of claims for losses resisted by the company.
 - (c) The whole amount of unearned premiums on outstanding risks.
 - (d) The amount of dividends declared and due and remaining unpaid.
 - (e) The amount of dividends, if any, declared and not yet due.
 - (f) The amount of money borrowed and remaining unpaid, and the security, if any, given for the payment thereof.
 - (g) The amount of all other existing claims.
5. The income of the company during the preceding year, specifying:
 - (a) The whole amount of interest received, stating separately the amount of interest received on loans in the State of North Dakota.
 - (b) The whole amount of cash premiums received, stating separately the amount of premiums received on policies written in the state.
 - (c) The whole amount of income received from all sources.
6. Expenditures during the preceding year, specifying:
 - (a) The whole amount of losses paid during the preceding year stating how much of the same accrued prior and how much subsequent to the date of the preceding statement; also stating separately the

amount of losses paid upon risks taken in this state and how much accrued prior and how much subsequent to the preceding statement.

- (b) The amount of dividends paid during the preceding year.
 - (c) The whole amount of fees and commissions paid to officers and agents during the preceding year.
 - (d) The amount of taxes paid during the preceding year, stating separately the amount paid in this state.
 - (e) The amount of fees paid the commissioner of insurance of this state.
 - (f) The whole amount paid for salaries for officers and agents during the preceding year.
 - (g) The whole amount of all other expenditures.
 - 4. Such statement shall further specify:
 - (a) The gross amount of risks taken during the preceding year, stating the amount in this state separately.
 - (b) The whole amount of risks outstanding.
 - (c) The whole amount of losses incurred during the year, including those claims not yet due, stating separately those incurred in this state.
 - (d) The number of agents in this state. (R. C. 1905, § 4457.)
- See, also section 4931.

§ 4917. STATEMENTS VERIFIED. DUTY OF COMMISSIONER.] Such statements must be verified by the signature and oath of the president or vice president and of the secretary of a domestic insurance company, and by the manager or general agent of a foreign company doing business in this state; and it shall be the duty of the commissioner of insurance to cause the information contained in such statements to be arranged in a tabular form and printed annually for distribution to the companies doing business in this state and for transmission to the legislative assembly with his biennial report. (R. C. 1905, § 4468.)

§ 4918. STATEMENTS OF RECEIVERS.] It shall be the duty of all receivers of insurance companies on or before the thirtieth day of June of each year and at any other time, when required by the commissioner of insurance, to make and file annually statements of their assets and liabilities and of their income and expenditures in the same manner and form as the officers of such companies are required by law to make, and for refusal or neglect to make and file the same they shall be subject to the same penalty. (R. C. 1905, § 4469.)

§ 4919. INQUIRY INTO CONDITION OF COMPANIES.] The commissioner of insurance is authorized and empowered to address any inquiries to any insurance company doing or applying for permission to do business in this state in relation to its doings or condition or any other matter connected with its transactions and it shall be the duty of any such company so addressed to reply promptly in writing to any such inquiries. (R. C. 1905, § 4970.)

§ 4920. AGENTS MUST NOT ACT WITHOUT CERTIFICATE.] No agent shall act for any insurance company directly or indirectly in taking risks or transacting the business of insurance without procuring from the commissioner of insurance a certificate of authority, stating that such corporation or company has complied with all the requisites of this chapter. The statements and evi-

dences of investment required by this chapter shall be renewed from year to year in such manner and form as are required by this chapter and the commissioner of insurance on being satisfied that the capital securities and investments remain secure as hereinbefore provided shall furnish a renewal of the certificate as aforesaid. (R. C. 1905, § 4471.)

Granting or revoking of certificate to transact business within commissioner's discretion. *State v. Carey*, 2 N. D. 36, 49 N. W. 164.

Soliciting applications necessary in formation of mutual insurance company not a violation. *Montgomery v. Harker*, 9 N. D. 527, 84 N. W. 369.

Crime for agent to act without procuring certificate of authority. *State v. Hogan*, 8 N. D. 301, 78 N. W. 1051, 73 Am. St. Rep. 759, 45 L. R. A. 166.

§ 4921. EXAMINATION BEFORE GRANTING CERTIFICATES. WHEN DOMESTIC COMPANIES EXAMINED. EXAMINATION OF FOREIGN COMPANIES. EXPENSES.] Before granting certificates of authority to an insurance company to issue policies or make contracts of insurance the commissioner of insurance shall be satisfied by such examination and evidence as he sees fit to make and require that such company is duly qualified under the laws of the state to transact business therein. As often as once in two years he shall personally, or by his deputy or chief clerk, visit each domestic insurance company and thoroughly inspect and examine its affairs, especially as to its financial condition and ability to fulfill its obligations and whether it has complied with the law. He shall also make an examination of any such company whenever he deems it prudent to do so or upon the request of five or more of the stockholders, creditors, policy holders or persons pecuniarily interested therein who shall make affidavit of their belief, with specifications of their reasons therefor, that such company is in an unsound condition. Whenever he deems it prudent for the protection of policy holders in this state he shall in like manner visit and examine, or cause to be visited and examined by some competent person appointed by him for that purpose any foreign insurance company applying for admission, or already admitted, to do business by agencies in this state and such company shall pay the proper charges incurred in such examination, including the expenses of the commissioner or his deputy. For the purposes aforesaid the commissioner or person making the examination shall have free access to all books and papers of an insurance company that relate to its business and to the books and papers kept by any of its agents and may summon as witnesses and examine under oath the directors, officers, agents and trustees of any such company and any other persons in relation to its affairs, transactions and condition. (R. C. 1905, § 4472.)

§ 4922. AUTHORITY REVOKED FOR FALSE STATEMENT. WHEN REVOCATION SET ASIDE.] If the commissioner of insurance has, or shall have at any time after examination, reason to believe that any annual statement or other report, required or authorized by this article made or to be made out by an officer or agent of any insurance company is false, it shall be the duty of said commissioner of insurance immediately to revoke the certificate of authority of such company and mail a copy of such revocation to such company, and to the agents thereof in this state and such company and its agents after such notice shall discontinue the issuance of any new policies or the renewal of any policy previously issued; and such revocation shall not be set aside nor any new certificate

of authority be given until satisfactory evidence shall have been furnished to said commissioner of insurance that such company is in substance and in fact in the condition set forth in such statement or report and that all requirements of this article have been fully complied with. (R. C. 1905, § 4473.)

§ 4923. COMMISSIONER MUST ASCERTAIN NET CASH VALUE OF LIFE POLICIES.] The commissioner of insurance shall, at the expense of the company, as soon as practicable after statements are filed, proceed to ascertain the net cash value of all life insurance policies in force. The commissioner of insurance may, however, accept such valuation from the proper officer of the company or the insurance officer of the state in which such company is located, should he deem it expedient so to do. When the actual funds of any life or accident insurance company doing business in this state are not of a net value equal to the net value of its policies according to the combined experience or actuaries' rate of mortality, with interest at four per cent. per annum, it shall be the duty of the commissioner of insurance to give notice to such company and its agents to discontinue the issuance of new policies in this state until its funds have become equal to its liabilities, valuing its policies as aforesaid. Any officer or agent, who after such notice has been given issues or delivers a new policy from and in behalf of such company before its funds have become equal to its liabilities as aforesaid shall forfeit for each offense a sum not exceeding one thousand dollars. (R. C. 1905, § 4474.)

§ 4924. TAX, HOW LEVIED.] Every insurance company doing business in this state, except joint stock and mutual companies, organized under the laws of this state, shall at the time of making the annual statement of business done, as required by law, pay to the commissioner of insurance two and one-half per cent. of the gross amount of premiums received in this state during the preceding year. Upon payment of such sum the commissioner of insurance shall issue the annual certificates provided by law. (R. C. 1905, § 4475.)

Association incorporated principally to secure for each member payment of certain sum to his beneficiary at death is taxable as a life insurance company. *Masonic Association v. Taylor*, 2 S. D. 324, 50 N. W. 93.

Ancient Order United Workmen is exempt from state tax. *Ancient Order, U. W. v. Shober*, 16 S. D. 513, 94 N. W. 405.

Imposes "occupation tax" and not an "ordinary tax" within constitution relating to taxation. *Queen City F. Ins. Co. v. Basford*, 27 S. D. 164, 130 N. W. 44.

State tax on insurance premiums. 57 L. R. A. 69.

§ 4925. AUTHORITY OF FOREIGN OR DOMESTIC COMPANY REVOKED, HOW.] If the commissioner of insurance is of opinion upon examination or other evidence that a foreign insurance company is in an unsound condition, or if it has failed to comply with the law, or if it, its officers or agents, refuse to submit to examination, or to perform any legal obligation in relation thereto, or if a life insurance company, that its actual funds, exclusive of its capital, are less than its liabilities, he shall revoke or suspend all certificates of authority granted to it or to its agents, and shall cause notifications thereof to be published three times, once in each week for three successive weeks, in some newspaper published at the seat of government and no new business shall thereafter be done by it or its agents in this state while such default or disability

continues, nor until its authority to do business is restored by the commissioner; provided, further, that if any insurance corporation organized under the laws of any other state or country and having been authorized to transact business in this state, shall remove or make application to remove into any court of the United States any action or proceeding begun in any court of this state upon a claim or cause of action arising out of any business or transaction done in this state, or upon any contract made, executed or to be performed herein, the commissioner of insurance shall revoke all certificates of authority granted to such insurance corporation, or to its agents, and shall cause notifications thereof to be published three times, once in each week for three successive weeks in some newspaper published at the seat of government, and no new business shall thereafter be done by it or its agents in this state until after the expiration of three years from the date of such last publication. If upon examination he is of the opinion that any domestic insurance company is insolvent, or has exceeded its powers or has failed to comply with any provisions of law, or that its condition is such as to render its further proceedings hazardous to the public or its policy holders, he shall apply to the district court of the county in which the principal office of the company is located to issue an injunction restraining it in whole or in part from further proceeding with its business. The court or judge may, in its discretion, issue an injunction forthwith or upon notice and hearing thereon, and after a full hearing of the matter may dissolve or modify such injunction or make it perpetual, and may make all orders and decrees needful in the premises and may appoint agents or receivers to take possession of the property and effects of the company and to settle its affairs according to the course of proceedings in equity. (R. C. 1905, § 4476.)

§ 4926. INSURANCE BY RESIDENT AGENTS ONLY.] No insurance company shall do business in this state, except through its authorized agents who must be residents of and have their office or place of business in this state. All policies not written in accordance with the foregoing provisions shall be deemed a violation of this article. (R. C. 1905, § 4477.)

§ 4927. PENALTY FOR NOT MAKING STATEMENT. FOR FALSE STATEMENT.] Any insurance company doing business in this state that neglects to make the statements in the manner and within the time in this article required shall forfeit one hundred dollars for each day's neglect, and upon notice by the insurance commissioner to that effect, its authority to do new business shall cease while such default continues and every such company that wilfully makes false statements shall be liable to a fine of not less than five hundred dollars nor more than one thousand dollars. Any new business done by the insurance company after neglect to make the required statements shall be deemed to be done in violation of law. (R. C. 1905, § 4478.)

§ 4928. PENALTY WHEN THERE IS NO SPECIFIC PROVISION.] For violation of any provision of this chapter when no penalty is specifically provided for herein the offender shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. (R. C. 1905, § 4479.)

§ 4929. FEES.] There shall be paid by every company doing business in this state, except county mutual insurance companies, the following fees:

Upon filing articles of incorporation, or copies thereof, twenty-five dollars.

Upon filing the annual statement, ten dollars.

For each certificate of authority and certified copy thereof, two dollars.

For every copy of any paper filed in the insurance department, the sum of twenty cents per folio; and for affixing the official seal on such copy and certifying the same, the sum of one dollar.

For official examination of companies under this article the actual expense incurred, not to exceed ten dollars per day. (R. C. 1905, § 4480.)

§ 4930. SAME CONDITIONS IMPOSED ON COMPANIES OF OTHER STATES AS THEY IMPOSE ON DOMESTIC COMPANIES.] Whenever the laws of any other state of the United States or foreign country shall require of insurance companies incorporated under the laws of this state, or of the agent thereof, any deposits of securities in such state for the protection of policy holders or otherwise, or any payment for taxes, fines, penalties, certificate of authority, license or fees greater than the amount required for such purposes from similar companies of other states by the then existing laws of this state, then and in every such case, all insurance companies of such states establishing or having heretofore established an agency in this state, shall be and are hereby required to make the same deposit for a like purpose with the state treasurer of this state, and to pay to the commissioner of insurance an amount equal to the amount of such charges and payment imposed by the laws of such other states upon the companies of this state and the agents thereof. (R. C. 1905, § 4481.)

Restrictions on business of foreign insurance companies. 24 L. R. A. 298.

Effect on insurance by foreign company of non-compliance with statutory requirements. 20 L. R. A. 405.

Right of burglary and theft insurance companies to do business in foreign states. 46 L. R. A. (N. S.) 563.

ARTICLE 19—REPORTS OF LIFE INSURANCE COMPANIES.

§ 4931. ANNUAL REPORT, CONTAINS WHAT.] In addition to any other matter which may be required by law or pursuant to law by the commissioner of insurance to be stated therein, every annual report of every life insurance company doing business in this state, shall contain an accurate, concise and complete statement of the following matters, to-wit:

1. All the real property held by the company, the dates of acquisition, the names of the vendors, the actual cost, the value at which it is carried on the company's books, the market value, the amounts expended during the year for repairs and improvements, the gross and net income from each parcel, and if any portion thereof be occupied by the company the rental value thereof, a statement of any certificate issued by the commissioner extending the time for the disposition thereof, and all purchases and sales made since the last annual statement, with particulars as to dates, names of vendors and vendees and the consideration.

2. The amount of existing loans upon the security of real property, stating the amount loaned upon property in each state and foreign country.

3. The moneys loaned by the company to any person other than loans upon the security of real property above mentioned and other than loans upon policies the actual borrowers thereof, the maturity and the rate of interest of such loans, the securities held therefor, and all substitutions of securities in

connection therewith, and the same particulars with reference to any loans made or discharged since the last annual statement.

4. All other property owned by the company or in which it has any interest (including all securities, whether or not recognized by law as proper investments), the dates of acquisition, from whom acquired, the actual cost, the value at which the property is carried upon the books, the market value, the interest or dividends received thereon during the year; also all purchases and sales of property other than real estate made since the last annual statement with particulars as to dates, names of purchasers and sellers, and the consideration; and also the income received and outlays made in connection with all such property.

5. All commissions paid to any persons in connection with loans or purchases or sales of any property, and a statement of all payments for legal expenses, giving particulars as to dates, amounts and names and addresses of payees.

6. All moneys expended in connection with any matter pending before any legislative body or any officer or department of government, giving particulars as to dates, amounts, names and addresses of payees, the measure or proceeding in connection with which the payment was made, and the interest of the company therein.

7. The names of officers and directors of the company, the proceedings at the last annual election, giving the names of candidates and the number of votes cast for each, and whether in person, by proxy or mail.

8. The salary, compensation and emoluments received by officers or directors and where the same amount to more than five thousand dollars, that received by any person, firm or corporation, with particulars as to dates, amounts, payees and the authority by which the payment was made; also all salaries paid to any representative either at the home office, or at any branch office, or agency, for agency supervision.

9. The largest balances carried in each bank or trust company during each month of the year.

10. All death claims resisted or compromised during the year with particulars as to sums insured, sums paid and reasons assigned for resisting or compromising the same in each case.

11. A complete statement of the profits and losses upon the business transacted during the year and the sources of such gains and losses, and a statement showing separately the margins upon premiums for the first year of insurance and the actual expenses chargeable to the procurement of new business incurred since the last annual statement. A foreign company, issuing both participating and non-participating policies, shall make a separate statement of profits and losses, margins and expenses, as aforesaid, with reference to each of said kinds of business, and also showing the manner in which any general outlays of the company have been apportioned to each of such kinds of business.

12. A statement separately showing the amount of the gains of the company for the year attributable to policies written after December thirty-first, nineteen hundred and and the precise method by which the calculation has been made.

13. The rates of annual dividends declared during the year for all plans of insurance and all durations for ages at entry, twenty-five, thirty-five, forty-five and fifty-five, and the precise method by which such dividends have been calculated.

14. A statement showing the rates of dividends declared upon deferred dividend policies completing their dividend periods for all plans of insurance and the precise methods by which said dividends have been calculated.

15. A statement showing any and all amounts set apart or provisionally ascertained or calculated or held awaiting apportionment upon policies with deferred dividend periods longer than one year for all plans of insurance and all durations and for ages of entry as aforesaid, together with the precise statements of the methods of calculation by which the same have been provisionally or otherwise determined.

16. A statement of any and all reserve or surplus funds held by the company and for what purpose they are claimed respectively to be held. (1907, Ch. 141.)

See, also, section 4916.

ARTICLE 21—LIVE STOCK.

§ 4951. GENERAL LAWS GOVERN.] Companies organized under this article shall be subject to the general statutes of this state relating to domestic mutual insurance companies, in so far as the same are applicable and not in conflict with the express provisions of this article. (R. C. 1905, § 4500.)

§ 4952. LIVE STOCK INSURANCE COMPANIES, HOW ORGANIZED.] Any number of persons not less than ten, of whom at least five shall be residents of this state, may form a corporation for mutual insurance against loss or damage to pure bred live stock occasioned by the death of the property insured by fire, lightning, accident or disease, which shall possess the powers and be subject to the duties and liabilities of other insurance companies, except as herein otherwise provided. The term "pure bred live stock," as used in this article includes horses, cattle, sheep and swine of either sex and any breed; provided, that the animals insured must be duly registered in the recognized stud or herd book of such breed; and provided, further, that corporations may be organized under this article for the purpose of insuring either or all of said live stock, against loss or damage to the property insured by reason of fire, lightning, accident or disease, or any or all of them. (R. C. 1905, § 4501.)

§ 4953. MANAGEMENT.] The general management of the business of such company shall be vested in a board of directors of not less than five nor more than nine directors, each of whom shall during his term of office be a policy holder in the company. Such directors shall be elected annually and shall hold their offices for one year and until their successors are elected and qualified. (R. C. 1905, § 4502.)

§ 4954. BOARD OF DIRECTORS TO ELECT OFFICERS AND FIX BOND.] It shall be the duty of the board of directors to annually elect such officers of the corporation as may be provided in the articles of incorporation and by-laws of the company. It shall also be the duty of the said board of directors to fix the amount of the bonds required of the treasurer and other officers having or likely to have control of any funds belonging to the company, which bonds, in the case of the treasurer, shall not be less than ten thousand dollars, and

in the case of the secretary not less than two thousand five hundred dollars, and as near as may be shall equal twice the amount of money likely at any one time to be in the hands of the respective officers. (R. C. 1905, § 4503.)

§ 4955. MEMBERS MAY VOTE BY PROXY.] Members may vote by proxy dated and executed within three months and returned and recorded on the books of the company three days or more before the meeting at which they are to be used. (R. C. 1905, § 4504.)

§ 4956. AMOUNT OF SUBSCRIBED INSURANCE REQUIRED.] No policy shall be issued by an insurance company organized under this article until not less than thirty thousand dollars of insurance in not less than fifteen separate risks have been subscribed for and entered on its books. (R. C. 1905, § 4505.)

ARTICLE 22—CHATTEL MORTGAGES IN APPLICATION.

§ 4957. CHATTEL MORTGAGE VOID UNLESS ON SEPARATE PAPER.] It shall be unlawful for any insurance company, or any agent or solicitor therefor within this state, to take or procure to be taken upon the property to be insured, or any other property, a chattel mortgage, securing the payment of the premium due or to become due, including policy fees, or any part thereof, unless such chattel mortgage shall be printed or written upon a separate and distinct paper from the application, and no mortgage given in violation of the provisions of this section shall be valid or binding upon the party executing the same, but shall in all things be null and void. (R. C. 1905, § 4506.)

§ 4958. PENALTY FOR VIOLATING LAST SECTION.] Any insurance company, or any agent or solicitor thereof, violating the provisions of the last section shall be deemed guilty of a misdemeanor; and such company shall forfeit all its rights and privileges under its articles of incorporation. (R. C. 1905, § 4507.)

ARTICLE 23—LICENSING INSURANCE AGENTS.

§ 4959. AGENTS DEFINED.] Whoever solicits insurance on behalf of any insurance corporation or person desiring insurance of any kind, or transmits an application for a policy of insurance, other than for himself, to or from any such corporation, or who makes any contract for insurance, or collects any premium for insurance, or in any manner aids or assists in doing either, or in transacting any business of like nature for any insurance corporation, or advertising to do any such thing, shall be held to be an agent of such corporation to all intents and purposes, unless it can be shown that he receives no compensation for such services. This section shall not apply to fraternal, assessment or beneficiary associations. (R. C. 1905, § 4508.)

§ 4960. MUST HAVE LICENSE. PENALTY FOR NON-COMPLIANCE.] No officer or broker, agent or sub-agent of any insurance corporation of any kind, except county mutual insurance corporations of this state, shall act or aid in any manner in transacting the business of or with such corporation, in placing risks or effecting insurance therein, without first procuring from the commissioner of insurance a certificate of authority as provided by law, nor after the period named in such certificate shall have expired. Every person violating the provisions of this and the previous section shall be guilty of a misdemeanor and be punished by a fine of not less than fifty dollars nor more than five hundred dollars for each offense. (R. C. 1905, § 4509.)

Effect of insurance agent's failure to procure license. 1 L. R. A. 1159.

ARTICLE 24—RESIDENT AGENTS FOR TRANSACTION OF FIRE INSURANCE BUSINESS.

§ 4961. FOREIGN AGENTS.] No insurance company or association, not incorporated under the laws of this state, authorized to transact business herein, shall make, write, place or cause to be made, written or placed, any policy, duplicate policy or contract of insurance of any kind or character, or any general or floating policy, upon property situated or located in this state except after the said risk has been approved in writing, by an agent who is a resident of this state, regularly commissioned and licensed to transact insurance business therein, who shall countersign all policies so issued and make a record of the same on books provided for that purpose and receive the commission thereon when the premium is paid, to the end that the state may receive the taxes required by law to be paid on the premiums collected for insurance on all property located in the state, and the agents be paid the commission thereon. Nothing herein shall be construed to prevent any such insurance company or association, authorized to transact business in this state, from issuing policies at its principal or department offices, covering property in this state, provided that such policies are issued upon applications procured and submitted to such company by agents who are residents of this state, and licensed to transact the business of insurance herein, and who shall countersign all policies so issued and receive the commission thereon when paid; provided, no provision of this section is intended to or shall apply to direct insurance covering the rolling stock of railroad corporations or property in transit, while in the possession and custody of railroad corporations or other common carriers nor to movable property of such common carrier used or employed by them in their business as common carriers of freight, merchandise or passengers. (R. C. 1905, § 4510.)

§ 4962. CANNOT REINSURE.] No fire insurance company or association shall reinsure, or assume as a reinsuring company or otherwise in any manner or form whatever, the whole or any part of any risk or liability, covering property located in this state, of any insurance company or association not authorized to transact business in this state. (R. C. 1905, § 4511.)

§ 4963. INSURANCE COMMISSIONER. EXAMINE RECORDS, BOOKS, ETC.] Whenever the commissioner of insurance shall have or receive information that any fire insurance company or association, not incorporated under the laws of this state, has violated any of the provisions of section 4961, he is authorized, at the expense of such company or association, to examine, by himself or his accredited representative at the principal office, or offices of such company or association, located in the United States of America, and also at such other offices or agencies of such company or association as he may deem proper, all books, records and papers of such company or association and may examine under oath, the officers and managers and agents of such company or association as to such violation or violations. The refusal of any such company or association to submit to such examination or to exhibit its books and records for inspection shall be presumptive evidence that it is violating the provisions of section 4961, and shall subject it to the penalties prescribed and imposed in section 4964. (R. C. 1905, § 4512.)

§ 4964. PENALTY FOR VIOLATION.] Any insurance company or association

violating or failing to observe and comply with any of the provisions of sections applicable thereto, shall be subject to and liable to pay a penalty of five hundred dollars for each violation thereof and for each failure to observe and comply with any provisions of the three previous sections mentioned. Such penalty may be collected and recovered in an action brought in the name of the state in any court having jurisdiction thereof. Any insurance company or association which shall neglect and refuse for thirty days after judgment in any such action to pay and discharge the amount of such judgment shall have its authority to transact business in this state revoked by the commissioner of insurance and such revocation shall continue for at least one year from the date thereof, nor shall any insurance company or association whose authority to transact business in this state shall have been so revoked be again authorized or permitted to transact business herein until it shall have paid the amount of any such judgment, and shall have filed in the office of the commissioner of insurance a certificate signed by its president or other chief officer to the effect that the terms and obligations of the provisions herein are accepted by it as a part of the condition of its right and authority to transact business in this state. (R. C. 1905, § 4513.)

CHAPTER 19.

ACCIDENT AND SICKNESS INSURANCE CORPORATIONS, ASSOCIATIONS AND SOCIETIES.

§ 4965. NUMBER REQUISITE TO ORGANIZATION.] Any number of persons, not less than five, a majority of whom are citizens of this state, may associate themselves together as a corporation, association or society for the purpose of transacting the business of accident or sickness, or accident and sickness insurance upon the assessment plan. (1907, Ch. 157, Pr. 1.)

§ 4966. COMPLIANCE REQUIRED.] Every corporation, association or society organized under this act shall, before commencing business, comply with the provisions of this act. (1907, Ch. 157, Pr. 2.)

§ 4967. ARTICLES, STATE WHAT.] The articles of incorporation of such organizations shall state the name or title by which the corporation, association or society shall be known in law, the location of its principal office (which office must be located in this state) with its plan of doing business clearly and fully defined, the number of its directors, trustees or managers, and shall be submitted to the insurance commissioner and attorney general, and if said articles of incorporation are found to comply with the provisions of this act they shall approve the same. When said articles of incorporation are thus approved they shall be recorded in the office of the recorder of deeds in the county where such organization is located, and of the secretary of state, and a notice published as provided for under the general incorporation laws of the State of North Dakota: provided, that corporations, associations and societies heretofore incorporated and doing business in this state shall not be required to re-incorporate. But any corporation, association or society may become a corporation under this act and avail itself of the provisions herein by filing with the insurance commissioner a certificate signed by the president and secre-

tary of such corporation, association or society, setting forth the facts as to its incorporation, and that it desires to avail itself of the provisions of this act and will be controlled thereby and transact its business thereunder; provided, this act shall not relieve any corporation, association or society now doing business in this state from the fulfillment of any contract heretofore entered into with its members under its policies or certificates of membership, nor shall any member be relieved thereby from his or her part of the contract. (1907, Ch. 157, Pr. 3.)

§ 4968. NAME FORBIDDEN.] No corporation, association or society organized under this act shall take any name or title in use by any other corporation, association, or society, or so closely resembling such name as to deceive the public as to its identity. (1907, Ch. 157, Pr. 4.)

§ 4969. APPLICATION CONTAINS WHAT.] Each corporation, association or society organized under this act shall, before issuing any policy or certificate of membership, if said corporation, association or society has not membership, sufficient to pay the full amount of the certificate or policy on an assessment, cause the application for insurance to have printed in red ink in a conspicuous manner along the margin of said application the words "It is understood and agreed that the amount to be paid, when the certificate or policy issued upon this application becomes a claim, shall be dependent upon the amount collected for an assessment made to meet such claim," and they must have actual applications upon at least two hundred and fifty persons for accident indemnity, or accident and sick benefits in such corporation, association or society as the case may be, and shall file with the insurance commissioner satisfactory proof that the president, secretary and treasurer of said association or society will faithfully discharge their duties as such officers and fully comply with this act in the organization and carrying on the business of such corporation, association or society. A list of said applications giving the name, age and residence of the applicant, together with the annual dues and the proposed assessments thereon shall be filed with the insurance commissioner, with a sworn statement of such officers and that such parties have deposited with them one advance assessment on the insurance applied for, and a certificate of a solvent bank that such funds are deposited therein to be turned over to the treasurer of the corporation, association or society after certificate of authority is issued by the insurance commissioner as provided herein. (1907, Ch. 157, Pr. 5.)

§ 4970. AGENT MUST HAVE CERTIFICATE OF AUTHORITY.] No person shall act within this state as agent in receiving or procuring applications for accident insurance or accident and sick benefit insurance for any corporation, association or society organized under this act (except for the purpose of taking applications for organization), unless this corporation, association or society for which he is acting has received a certificate from the insurance commissioner as provided in this act, authorizing said corporation, association or society to transact business in this state, nor as general or traveling agent or solicitor, until he shall have received from the insurance commissioner a certificate in substance the same as that provided for in section 4976. (1907, Ch. 157, Pr. 6.)

§ 4971. BY-LAWS.] The by-laws of such corporation, association or

society shall state the object or objects for which the money to be collected is intended. (1907, Ch. 157, Pr. 7.)

§ 4972. AGE OF MEMBERS.] No corporation, association or society organized or operating under this act shall issue any certificate of membership or policy of insurance to any person under the age of fifteen years, nor over the age of sixty-five years. Any member of any corporation, association or society holding a policy or certificate of membership, naming a beneficiary, operating under this act shall have the right at any time with the consent of such corporation, association or society to designate a new and different beneficiary without requiring the consent of such beneficiary. (1907, Ch. 157, Pr. 8.)

§ 4973. ANNUAL REPORT.] The business year of such corporation, association or society organized or operating under this act shall close on the 31st day of December of each year, and such corporation, association or society shall, within sixty days thereafter, prepare under oath of its president and secretary, and file in the office of the insurance commissioner a detailed statement of its assets, liabilities, receipts from assessments and all other sources, expenditures, salaries of officers, number of contributing members, losses paid for indemnity and benefits, the amount paid on each death loss and answer such other interrogatories as the insurance commissioner (who shall furnish blanks for the purpose) may require, in order to ascertain its true, financial condition, and shall pay upon filing each annual statement the sum of ten dollars. The insurance commissioner shall publish said annual statement in detail in his annual report and for the purpose of verifying such statement the insurance commissioner may make, or cause to be made, an examination of the affairs of any corporation, association or society doing business under this act at the expense of the corporation, association or society, which expense shall not exceed the necessary hotel and traveling expenses of the auditor or clerk. If the insurance commissioner appoints some person not employed in his office to make the examination he shall in addition to actual expenses, be allowed not to exceed five dollars per day for the time actually employed. If the said insurance commissioner shall deem it necessary for the security of the funds of the association, he may require the official bonds of the officers to be increased to an amount not to exceed double the sum for which they are accountable, and he may require supplemental reports from any such corporation, association or society at such time and in such form as he may direct. (1907, Ch. 157, Pr. 9.)

§ 4974. RESERVE FUND.] Any North Dakota corporation, association or society organized and doing business under this act may create and maintain and disburse a reserve or surplus fund, and may invest such funds in interest bearing securities. (1907, Ch. 157, Pr. 10.)

§ 4975. DUTY OF INSURANCE COMMISSIONER.] When any North Dakota corporation, association or society operating under this act shall fail to make its annual statement to the insurance commissioner on or before the first day of March, or is conducting its business fraudulently and not in compliance with this act, then it shall be the duty of the insurance commissioner to promptly communicate the facts to the attorney general who shall at once commence action in the district court of the county in which said organization

is located, or before any judge thereof, citing the officers to appear before said court or judge, and if upon a hearing of said cause it is found to be for the best interests of the holders of certificates of membership or policies in said corporation, association or society, said court or judge shall have the power to remove any officer or officers of said corporation, association or society and appoint others in their place until the next annual election. If it is found to be for the best interest of said certificate or policy holder that the affairs of said corporation, association or society be wound up, said court or judge shall so direct, and for that purpose may appoint a receiver, who shall regard all proper claims for benefits under said certificates as preferred claims. No action or proceeding shall be instituted with a view of the appointment of a receiver or closing up of the business of any such corporation, association or society by any other person, or in any other manner except as herein provided. (1907, Ch. 157, Pr. 11.)

§ 4976. COMPANY'S CERTIFICATE OF AUTHORITY.] On compliance with this act by any corporation, association or society the insurance commissioner shall issue a certificate that it has fully complied with the provisions of this act, and is authorized to transact business for a period of one year from April 1st of the year of its issue. (1907, Ch. 157, Pr. 12.)

§ 4977. VOTING PROXY.] At any regularly constituted meeting of the policy holders or certificate holders of any corporation, association or society doing business under this act, each policy holder or certificate holder shall be entitled to at least one vote, and any such person may in writing authorize any other person entitled to vote at such meeting to vote for him. (1907, Ch. 157, Pr. 13.)

§ 4978. LIMIT TIME OF SUIT.] Any corporation, association or society organized or operating under this act may limit the time within which suit may be brought against it on any claim based upon its policies or certificates of membership, and after the expiration of the time thus limited shall not be liable thereon; provided, such limitation shall be incorporated in and form a part of the contract between the company, association or society, and the assured or its members; and provided, further, that such limitation shall not be limited to a period of less than one year from the time such right of action accrues. (1907, Ch. 157, Pr. 14.)

§ 4979. RECIPROCAL PENALTIES.] Whenever the existing or future laws of any other state of the United States, territory or province of any other country, or the rules and regulations of the insurance department of any such state, territory or province shall require of corporations, associations or societies organized and doing business under this act, any payment of taxes, fines, penalties, certificates of authority, licenses, fees, or require any other duties, examinations or acts other than are by the laws of this state required of such mutual corporation, association or society organized under the laws of such other state, territory or province, then the insurance commissioner shall immediately require from every such insurance corporation, association or society of such other state, territory or province transacting or seeking to transact business in this state, the like payment of all licenses, fees, taxes, fines or penalties, and the like doing of all acts which by the laws or the rules of the insurance department of such other state, territory or province,

require in excess of the licenses, fees, taxes, statements, fines, penalties, acts, examinations or duties required by the laws of this state of the mutual companies of such other states, transacting business in this state. (1907, Ch. 157, Pr. 15.)

§ 4980. FOREIGN CORPORATIONS, LICENSED WHEN.] When any corporation, association or society not organized in this state and doing business of accident or sickness, or accident and sickness insurance shall comply with the requirements of this act applicable to it and shall satisfy the insurance commissioner that it is in a solvent condition and able to meet its obligations at maturity, he shall issue to such foreign corporation, association or society a certificate stating that such corporation, association or society has complied with the laws of this state and authorizing said corporation, association or society to do and transact such business in this state subject to the provisions of this act. (1907, Ch. 157, Pr. 16.)

CHAPTER 23.

ARTICLE 6—FRATERNAL BENEFIT SOCIETIES.

§ 5059. FRATERNAL BENEFIT SOCIETIES DEFINED.] Any corporation, society, order or voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge system with ritualistic form of work and representative form of government, and which shall make provisions for the payment of death benefits in accordance with section 5062 hereof, is hereby declared to be a fraternal benefit society. (1913, Ch. 191, Pr. 1.)

§ 5060. LODGE SYSTEM DEFINED.] Any society having a supreme governing or legislative body, and subordinate lodges or branches by whatever name known, into which members shall be elected, initiated and admitted in accordance with its constitution laws, rules, regulations and prescribed ritualistic ceremonies, which subordinate lodges or branches shall be required by the laws of such society to hold regular or stated meetings at least once in each month, shall be deemed to be operating on the lodge system. (1913, Ch. 191, Pr. 2.)

§ 5061. REPRESENTATIVE FORM OF GOVERNMENT DEFINED.] Any such society shall be deemed to have a representative form of government when it shall provide in its constitution and laws for a supreme legislative or governing body, composed of representatives elected either by the members or by delegates elected directly or indirectly by the members, together with such other members as may be prescribed by its constitution and laws; provided, that the elective members shall constitute a majority in number and have not less than two-thirds of the votes, nor less than the votes required to amend its constitution and laws and provided, further, that the meetings of the supreme or governing body, and the election of officers, representatives or delegates shall be held as often as once in four years. The members, officers, representatives or delegates of a fraternal benefit society shall not vote by proxy. (1913, Ch. 191, Pr. 3.)

§ 5061a. EXEMPTIONS.] Except as herein provided, such societies shall be governed by this act, and shall be exempt from all provisions of the insur-

ance laws of this state, not only in governmental relations with the state, but for every other purpose, and no law hereafter shall apply to them unless they be expressly designated therein. (1913, Ch. 191, Pr. 4.)

§ 5062. BENEFITS.] Sub-section 1. Every society transacting business under this act shall provide for the payment of death benefits, and may provide for the payment of benefits in case of temporary or permanent physical disability, either as the result of disease, accident, or old age; provided, the period of life at which the payment of benefits or disability on account of old age shall commence, shall not be under seventy years, and may provide for monuments or tombstones to the memory of its deceased members, and for the payment of funeral benefits. Such society shall have the power to give a member, when permanently disabled or on attaining the age of seventy, all, or such portion of the face value of his certificate as the laws of the society may provide; provided, that nothing in this act contained shall be so construed as to prevent the issuing of benefit for a term of years less than the whole of life, which are payable upon the death or disability of the member occurring within the term for which the benefit certificate may be issued. Such society shall, upon written application of the member, have the power to accept a part of the periodical contributions in cash, and charge the remainder, not exceeding one-half of the periodical contribution, against the certificate with interest payable or compounded annually at a rate not lower than four per cent. per annum; provided that this privilege shall not be granted except to societies which have readjusted or may hereafter readjust their rates of contributions, and to contracts affected by such readjustment.

Sub-section 2. Any society which shall show by the annual valuation hereinafter provided for that it is accumulating and maintaining the reserve not lower than the usual reserve computed by the American Experience Table and four per cent. interest, may grant to its members extended and paid up protection, or such withdrawal equities as its constitution and laws may provide; provided, that such grants shall in no case exceed in value the portion of the reserve to the credit of such members to whom they are made. (1913, Ch. 191, Pr. 5.)

§ 5063. BENEFICIARIES.] The payment of death benefits shall be confirmed (confined) to wife, husband, relative by blood to the fourth degree, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepchildren, children by legal adoption, or to a person or persons dependent upon the member; provided, that if after the issuance of the original certificate the member shall become dependent upon an incorporated charitable institution, he shall have the privilege with the consent of the society to make such institution his beneficiary. Within the above restrictions, each member shall have the right to designate his beneficiary, and from time to time have the same changed in accordance with the laws, rules and regulations of the society, and no beneficiary shall have or obtain any vested interest in the said benefit until the same has become due and payable upon the death of the said member; provided, that any society may, by its laws, limit the scope or beneficiaries within the above classes. (1913, Ch. 191, Pr. 6.)

Who is a "dependent" within statute or rules defining beneficiaries of mutual benefit societies. 2 L. R. A. (N. S.) 653; 36 L. R. A. (N. S.) 208; 37 L. R. A. (N. S.) 1191.

§ 5064. QUALIFICATIONS OF MEMBERSHIP.] Any society may admit to beneficial membership any person not less than sixteen and not more than sixty years of age, who has been examined by a legally qualified physician, and whose examination has been supervised and approved in accordance with the laws of the society; provided, that any beneficiary member of such society who shall apply for a certificate providing for disability benefits, need not be required to pass an additional medical examination therefor. Nothing herein contained shall prevent such society from accepting general or social members. (1913, Ch. 191, Pr. 7.)

§ 5065. CERTIFICATE.] Every certificate issued by any such society shall specify the amount of benefit provided thereby, and shall provide that the certificate, the charter or articles of incorporation, or, if a voluntary association, the articles of association, the constitution and laws of the society and the applications for membership and medical examination, signed by the applicant, and all amendments to each thereof, shall constitute the agreement between the society and the member, and copies of the same certified by the secretary of the society, or corresponding officer, shall be received in evidence of the terms and conditions thereof, and any changes, additions or amendments to said charter or articles of incorporation, or articles of association, if a voluntary association, constitution or laws duly made or enacted subsequent to the issuance of the benefit certificate shall bind the member and his beneficiaries and shall govern and control the agreement in all respects the same as though such changes, additions or amendments had been made prior to and were in force at the time of the application for membership. (1913, Ch. 191, Pr. 8.)

§ 5066. FUNDS.] Sub-section 1. Any society may create, maintain, invest, disburse and apply an emergency, surplus or other similar fund in accordance with its laws. Unless otherwise provided in the contract, such funds shall be held, invested and disbursed for the use and benefit of the society, and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment or the surrender of any part thereof, except as provided in sub-section 2 of section 5062. The funds from which benefits shall be paid and the funds from which the expenses of the society shall be defrayed, shall be derived from periodical or other payments by the members of the society and accretions of said funds; provided, that no society, domestic or foreign, shall hereafter be incorporated or admitted to transact business in this state which does not provide for stated periodical contributions sufficient to provide for meeting the mortuary obligations contracted, when valued upon the basis of the National Fraternal Congress Table of Mortality as adopted by the National Fraternity Congress, August 23, 1899, or any higher standard with interest assumption not more than four per cent. per annum, nor write or accept members for temporary or permanent disability benefits except upon tables based upon reliable experience, with an interest assumption not higher than four per cent. per annum. (1913, Ch. 191, Pr. 9.)

Sub-section 2. Deferred payments or installments of claims shall be considered as fixed liabilities on the happening of the contingency upon which such payments or installments are thereafter to be paid. Such liability shall be the present value of such future payments of installments upon the rate of interest

and mortality assumed by the society for valuation, and every society shall maintain a fund sufficient to meet such liabilities regardless of proposed future collections to meet any such liabilities.

§ 5067. INVESTMENTS.] Every society shall invest its funds only in securities permitted by the laws of this state for the investment of the assets of life insurance companies; provided, that any foreign society permitted or seeking to do business in this state, which invests its funds in accordance with the laws of the state in which it is incorporated shall be held to meet the requirements of this act for the investment of funds. (1913, Ch. 191, Pr. 10.)

§ 5068. DISTRIBUTION OF FUNDS.] Every provision of the laws of the society for the payment by members of such society, in whatever form made, shall distinctly state the purpose of the same and the proportion thereof which may be used for expenses, and no part of the money collected for mortuary or of disability purposes, or the net accretions of either or any of said funds shall be used for expenses. (1913, Ch. 191, Pr. 11.)

Distribution of assets of insolvent insurance company. L. R. A. 97.

§ 5069. ORGANIZATION.] Seven or more persons, citizens of the United States, and a majority of whom are citizens of this state, who desire to form a fraternal benefit society, as defined by this act, may make and sign (giving their addresses) and acknowledge before some officer competent to take acknowledgment of deeds, articles of incorporation, in which shall be stated:

1st. The proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company already transacting business in this state as to mislead the public or to lead to confusion.

2nd. The purpose for which it is formed—which shall not include more liberal powers than are granted by this act, provided, that any lawful, social, intellectual, education, charitable, benevolent, moral or religious advantages may be set forth among the purposes of the society—and the mode in which its corporate powers are to be exercised.

3rd. The names, residences, and official titles of all the officers, trustees, directors or other persons who are to have and exercise the general control and management of the affairs and funds of the society for the first year, or until the ensuing election, at which all such officers shall be elected by the supreme legislative or governing body, which election shall be held not later than one year from the date of the issuance of the permanent certificate.

Such articles of incorporation and duly certified copies of the constitution and laws, rules and regulations, and copies of all proposed form of benefit certificates, applications therefor and circulars to be issued by such society, and a bond in the sum of five thousand dollars, with sureties approved by the commissioner of insurance, conditioned upon the return of the advance payments, as provided in this section, to applicants, if the organization is not completed within one year, shall be filed with the commissioner of insurance, who may require such further information as he deems necessary, and if the purposes of the society conform to the requirements of this act, and all provisions of law have been complied with the commissioner of insurance shall so certify and retain and record (or file) the articles of incorporation, and furnish the incorporators a preliminary certificate authorizing said society to solicit members as hereinafter provided.

Upon receipt of said certificate from the commissioner of insurance said society may solicit members for the purpose of completing its organization and shall collect from each applicant the amount of not less than one regular monthly payment, in accordance with its table of rates as provided by its constitution and laws, and shall issue to each such applicant a receipt for the amount so collected. But no such society shall incur any liability other than for such advanced payments, nor issue any benefit certificate nor pay or allow, or offer or promise to pay or allow to any person any death or disability benefit until actual bona fide applications for death benefit certificates have been secured upon at least five hundred lives for at least one thousand dollars each, and all such applicants for death benefits shall have been regularly examined by legally qualified practicing physicians, and certificates of such examinations have been duly filed and approved by the chief medical examiner of such society; nor until there shall be established ten subordinate lodges or branches, into which said five hundred applicants have been initiated; nor until there has been submitted to the commissioner of insurance, under oath of the president and secretary, or corresponding officers of such society, a list of such applicants, giving their names, addresses, date examined, date approved, date initiated, name and number of the subordinate branch of which each applicant is a member, amount of benefits to be granted, rate of stated periodical contributions, which shall be sufficient to provide for meeting the mortuary obligation, contracted, when valued for death benefits upon the basis of the National Fraternal Congress Table of Mortality, as adopted by the National Fraternal Congress August 23, 1899, or any higher standard at the option of the society, and for disability benefits by tables based upon reliable experience and for combined death and permanent total disability benefits by tables based upon reliable experience, with an interest assumption not higher than four per cent. per annum; nor until it shall be shown to the commissioner of insurance by the sworn statement of the treasurer, or corresponding officer of such society that at least five hundred applicants have each paid in cash at least one regular monthly payment, as herein provided per one thousand dollars of indemnity to be effected, which payments in the aggregate shall amount to at least twenty-five hundred dollars; all of which shall be credited to the mortuary or disability fund on account of such applicants, and no part of which may be used for expenses.

Said advanced payments shall, during the period of organization, be held in trust, and, if the organization is not completed within one year, as hereinafter provided, returned to said applicants.

The commissioner of insurance may make such examination and require such further information as he deems advisable, and, upon presentation of satisfactory evidence that the society has complied with all the provisions of law, he shall issue to such society a certificate to that effect. Such certificate shall be prima facie evidence of the existence of such society at the date of such certificate. The commissioner of insurance shall cause a record of such certificate to be made and certified copy of such record may be given in evidence with like effect as the original certificate.

No preliminary certificate granted under the provisions of this section shall be valid after one year from its date, or after such further period, not ex-

ceeding one year, as may be authorized by the commissioner of insurance upon cause shown; unless the five hundred applicants herein required have been secured, and the organization has been completed, as herein provided, and the articles of incorporation and all proceedings thereunder shall become null and void in one year from the date of said preliminary certificate, or at the expiration of said extended period, unless such society shall have completed its organization and commenced business as herein provided. When any domestic society shall have discontinued business for the period of one year, or has less than four hundred members, its charter shall become null and void.

Every such society shall have the power to make a constitution and by-laws for the government of the society, the admission of its members, the management of its affairs, and the fixing and readjusting of the rates of contribution of its members from time to time; and it shall have the power to change, alter, add to, or amend such constitution and by-laws, and shall have such other powers as are necessary and incidental to carrying into effect the objects and purposes of the society. (1913, Ch. 191, Pr. 12.)

§ 5070. POWERS RETAINED. RE-INCORPORATION. AMENDMENTS.] Any society now engaged in transacting business in this state may exercise, after the passage of this act, all of the rights conferred thereby, and all of the rights, powers and privileges not exercised or possessed by it under its charter or articles of incorporation not inconsistent with this act, if incorporated; or if it be a voluntary association it may incorporate hereunder. But no society already organized shall be required to re-incorporate hereunder, and any such society may amend its articles of incorporation from time to time in the manner provided therein, or in its constitution and laws, and all such amendments shall be filed with the commissioner of insurance and shall become operative upon such filing unless a later time be provided in such amendments, or in its articles of incorporation, constitution or laws. (1913, Ch. 191, Pr. 13.)

§ 5071. MERGERS AND TRANSFERS.] No domestic societies shall merge with or accept the transfer of the membership or funds of any other society unless such merger or transfer is evidenced by a contract in writing, setting out in full the terms and conditions of such merger or transfer, and filed with the commissioner of insurance of this state together with a sworn statement of the financial condition of each of said society by its president and secretary, or corresponding officers, and a certificate of such officers, duly verified under oath of said officers of each of the contracting societies that such merger or transfer has been approved by a vote of two-thirds of the members of the supreme legislative or governing body of each of said societies. Upon the submission of said contract, financial statements and certificates, the commissioner of insurance shall examine the same, and if he shall find such financial statements to be correct and said contract to be in conformity with the provisions of this section, and that such merger or transfer is just and equitable to the members of each of said societies he shall approve said merger or transfer, issue his certificate to that effect, and thereupon the said contract of merger or transfer shall be of full force and effect.

In case such contract is not approved the facts of its submission and its contents shall not be disclosed by the commissioner of insurance. (1913, Ch. 191, Pr. 14.)

§ 5072. ANNUAL LICENSE.] Societies which are now authorized to transact business in this state may continue such business until the first day of April next succeeding the passage of this act, and the authority of such societies may thereafter be renewed annually, but in all cases to terminate on the first day of the succeeding April; provided, however, the license shall continue in full force and effect until the new license be issued or specifically refused. For each such license or renewal the society shall pay the commissioner of insurance.....dollars. A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this act. (1913, Ch. 191, Pr. 15.)

§ 5073. ADMISSION OF FOREIGN SOCIETY.] No foreign society now transacting business, organized prior to the passage of this act, which is not now authorized to transact business in this state, shall transact any business herein without a license from the commissioner of insurance. Any such society shall be entitled to a license to transact business within this state upon filing with the commissioner a duly certified copy of its charter or articles of association, a copy of its constitution and laws, certified by its secretary or corresponding officer; a power of attorney to the commissioner of insurance as hereinafter provided; a statement of its business under oath of its president and secretary, or corresponding officers, in the form required by the commissioner, duly verified by an examination made by the supervising insurance official of its home state or other state satisfactory to the commissioner of insurance of this state; a certificate from the proper official in its home state, province, or country, that the society is legally organized; a copy of its contract, which must show that benefits are provided for by periodical, or other payments by persons holding similar contracts; and upon furnishing the commissioner such other information as he may deem necessary to a proper exhibit of its business and plan of working, and upon showing that its assets are invested in accordance with the laws of the state, territory, district, province or country where it is organized, he shall issue a license to such society to do business in this state until the first day of the succeeding April, and such license shall, upon compliance with the provisions of this act, be renewed annually but in all cases to terminate on the first day of the succeeding April; provided, however, that license shall continue in full force and effect until the new license be issued or specifically refused. Any foreign society desiring admission to this state shall have the qualifications required of domestic societies organized under this act and have its assets invested as required by the laws of the state, territory, district, country, or province where it is organized. For each such license or renewal the society shall pay the commissioner.....dollars. When the commissioner refuses to license any society, or revokes its authority to do business in this state he shall reduce his ruling, order or decision to writing and file the same in his office, and shall furnish a copy thereof, together with a statement of his reasons, to the officers of the society, upon request, and the action of the commissioner shall be reviewable by proper proceedings in any court of competent jurisdiction within the state; provided, however, that nothing contained in this or the preceding section shall be taken or construed as preventing any such society from continuing in good faith

all contracts made in this state during the time such society was legally authorized to transact business herein. (1913, Ch. 191, Pr. 16.)

§ 5074. POWER OF ATTORNEY AND SERVICE OF PROCESS.] Every society, whether domestic or foreign, now transacting business in this state, shall, within thirty days after the passage of this act, and every said society hereafter applying for admission shall, before being licensed, appoint in writing the commissioner of insurance and his successors in office to be its true and lawful attorney, upon whom all legal process in any action or proceeding against it shall be served, and in such writing shall agree that any lawful process against it which is served upon such attorney shall be of the same legal force and validity as if served upon the society, and that the authority shall continue in force so long as any liability remains outstanding in this state.

Copies of such appointment, certified by said commissioner of insurance, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service shall only be made upon such attorney, must be made in duplicate upon the commissioner of insurance, or, in his absence, upon the person in charge of his office, and shall be deemed sufficient service upon such society; provided, however, that no such service shall be valid or binding against any such society when it is required thereunder to file its answer, pleading or defense, in less than thirty days from the date of mailing the copy of such service to such society. When legal process against any such society is served upon said commissioner of insurance he shall forthwith forward by registered mail one of the duplicate copies prepaid and directed to its secretary or corresponding officer. Legal process shall not be served upon any such society except in the manner provided herein. (1913, Ch. 191, Pr. 17.)

§ 5075. PLACE OF MEETING, LOCATION OF OFFICE.] Any domestic society may provide that the meetings of its legislative or governing body may be held in any state, district, province or territory wherein such society has subordinate branches, and all business transacted at such meetings shall be as valid in all respects as if such meetings were held in this state; but its principal office shall be located in this state. (1913, Ch. 191, Pr. 18.)

§ 5076. NO PERSONAL LIABILITY.] Officers and members of the supreme, grand, or any subordinate body of any such incorporated society shall not be individually liable for the payment of any disability or death benefit provided for in the laws and agreements of such society, but the same shall be payable only out of the funds of such society and in the manner provided by its laws. (1913, Ch. 191, Pr. 19.)

Liability of members of mutual insurance company. 32 L. R. A. 481.

Jurisdiction of equity to enforce liability of member of mutual insurance company. 40 L. R. A. (N. S.) 781.

§ 5077. WAIVER OF THE PROVISIONS OF THE LAWS.] The constitution and laws of the society may provide that no subordinate body, nor any of its subordinate officers or members shall have the power or authority to waive any of the provisions of the laws and constitution of the society, and the same shall be binding on the society and each and every member thereof and on all beneficiaries of members. (1913, Ch. 191, Pr. 20.)

§ 5078. BENEFIT NOT ATTACHABLE.] No money or other benefit, charity, or relief or aid to be paid, provided or rendered by any such society shall be liable to attachment, garnishment, or other process, or be seized, taken, appropriated or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary, or any other person who may have a right thereunder, either before or after payment. (1913, Ch. 191, Pr. 21.)

§ 5079. CONSTITUTION AND LAWS. AMENDMENT.] Every society transacting business under this act shall file with the commissioner of insurance a duly certified copy of all amendments of or additions to its constitution and laws within ninety days after the enactment of the same. Printed copies of the constitution and laws as amended, changed or added to, certified by the secretary or corresponding officer of the society shall be prima facie evidence of the legal adoption thereof. (1913, Ch. 191, Pr. 22.)

§ 5080. ANNUAL REPORTS.] Every society transacting business in this state shall annually, on or before the first day of March, file with the commissioner of insurance, in such form as he may require, a statement under oath of its president and secretary, or corresponding officers, of its condition and standing on the thirty-first day of December next preceding, and of its transactions for the year ending on that date, and also shall furnish such other information as the commissioner of insurance may deem necessary to a proper exhibit of its business and plan of working. The commissioner may at other times require any further statement he may deem necessary to be made relating to such society.

In addition to the annual report herein required each society shall annually report to the commissioner a valuation of its certificates in force on December 31st, last preceding; including those issued within the year for which the report is filed, in cases where the contributions for the first year in whole or in part are used for current mortality and expenses; provided, the first report of valuation shall be made as of December 31st, 1912. Such report of valuation shall show, as contingent liabilities, the present mid-year value of the promised benefits provided in the constitution and laws of such society under certificates then subject to valuation; and, as contingent assets, the present mid-year value of the future net contributions provided in the constitution and laws as the same are in practice actually collected. At the option of any society, in lieu of the above, the valuation may show the net value of the certificates subject to valuation hereinbefore provided, and said net value, when computed in case of monthly contributions, may be the means of the terminal values for the end of the preceding and of the current insurance years.

Such valuation shall be certified by a competent accountant or actuary, or, at the request and expense of the society, verified by the actuary of the department of insurance of the home state of the society, and shall be filed with the commissioner of insurance within ninety days after the submission of the last preceding annual report. The legal minimum standard of valuation for all certificates, except for disability benefits, shall be the National Fraternal Congress Table of Mortality as adopted by the National Fraternal Congress August 23, 1899, or, at the option of the society, any higher table; or at its option it may use a table based upon the society's own experience of at least

twenty years and covering not less than one hundred thousand lives with interest assumption not more than four per cent. per annum. Each such valuation report shall set forth clearly and fully the mortality and interest bases and the method of valuation. Any society providing for disability benefits shall keep the net contributions for such benefits in a fund separate and apart from all other benefit and expense funds and the valuation of all other business of the society; provided, that where a combined contribution table is used by a society for both death and permanent total disability benefits the valuation shall be according to tables of reliable experience, and in such case a separation of the funds shall not be required.

The valuation herein provided for shall not be considered or regarded as a test of the financial solvency of the society, but each society shall be held to be legally solvent so long as the funds in its possession are equal to or in excess of its matured liabilities.

Beginning with the year 1914 a report of such valuation and an explanation of the facts concerning the condition of the society thereby disclosed shall be printed and mailed to each beneficiary member of the society not later than June 1st of each year; or, in lieu thereof, such report of valuation and showing of the society's condition as thereby disclosed may be published in the society's official paper and the issue containing the same mailed to each beneficiary member of the society. The laws of such society shall provide that if the stated periodical contributions of the members are insufficient to pay all matured death and disability claims in full, and to provide for the creation and maintenance of the funds required by its laws, additional, increased, or extra rates of contribution shall be collected from the members to meet such deficiency; and such laws may provide that, upon the written application or consent of the member, his certificate may be charged with its proportion of any deficiency disclosed by valuation, with interest not exceeding five per centum per annum. (1913, Ch. 191, Pr. 23.)

§ 5081. PROVISIONS TO INSURE FUTURE SECURITY.] If the valuation of the certificates, as hereinbefore provided, on December 31, 1917, shall show that the present value of future net contributions, together with the admitted assets, is less than the present value of the promised benefits and accrued liabilities such society shall thereafter maintain said financial condition at each succeeding triennial valuation in respect of the degree of deficiency, as shown in the valuation as of December 31, 1917. If at any succeeding triennial valuation such society does not show at least the same condition the commissioner shall direct that it thereafter comply with the requirements herein specified. If the next succeeding triennial valuation after the receipt of such notice shall show that the society has failed to maintain the condition required herein the commissioner may, in the absence of good cause shown for such failure, institute proceedings for the dissolution of such society, in accordance with the provisions of section 5083, or in the case of a foreign society, its license may be canceled in the manner provided in this act.

Any such society, shown by any triennial valuation, subsequent to December 31, 1917, not to have maintained the condition herein required, shall within two years thereafter make such improvement as to show a percentage of deficiency not greater than as of December 31, 1917, or thereafter, as to all

new members admitted, be subject, so far as stated rates of contributions are concerned, to the provisions of section 5069, applicable in the organization of new societies; provided, that the net mortuary or beneficial contributions and funds of such new members shall be kept separate and apart from the other funds of the society. If such required improvement is not shown by the succeeding triennial valuation then the said new members may be placed in a separate class, and their certificates valued as an independent society in respect of contributions and funds. (1913, Ch. 191, Pr. 23a.)

§ 5082. ALTERNATIVE PROVISIONS.] In lieu of the requirements of sections 5080 and 5081, any society accepting in its laws the provisions of these sections may value its certificates on a basis herein designated "accumulation basis" by crediting each member with the net amount contributed for each year with interest at approximately the net rate earned and by charging him with his share of the losses for each year, herein designated "cost of insurance," and carrying the balance, if any, to his credit. The charge for the cost if insurance may be according to the actual experience of the society applied to a table of mortality recognized by the law of this state, and shall take into consideration the amount at risk during each year, which shall be the amount payable at death less the credit to the member. Except as specifically provided in its articles or laws or contracts no charge shall be carried forward from the first valuation hereunder against any member for any past share of losses exceeding the contributions and credit. If, after the first valuation, any member's share of losses for any year exceeds his credit including the contribution for the year the contribution shall be increased to cover his share of the losses. Any such excess share of losses chargeable to any member may be paid out of a fund or contributions especially created or required for such purpose.

Any member may transfer to any place adopted by the society with net rates on which tabular reserves are maintained and on such transfer shall be entitled to make such application of his credit as provided in the laws of the society.

Certificate issued, re-rated or re-adjusted on a basis providing for adequate rate with adequate reserves to mature such certificates upon assumption for mortality and interest recognized by the law of this state shall be valued on such basis, herein designated the "Tabular Basis;" provided, that if on the first valuation under this section a deficiency in reserve shall be shown for any such certificate the same shall be valued on the accumulative basis.

Whenever in any society having members upon the tabular basis and upon the accumulation basis the total of all costs of insurance provided for any year shall be insufficient to meet the actual death and disability losses for the year the deficiency shall be met for the year from the available funds after setting aside all credits in the reserve; or from increased contributions, or by an increase in the number of assessments applied to the society as a whole, or to classes of members as may be specified in its laws. Savings from a lower amount of death losses may be returned in like manner as may be specified in its laws.

If the laws of the society so provide the assets representing the reserves of any separate class of members may be carried separately for such class as

if an independent society, and the required reserve accumulation of such class so set apart shall not thereafter be mingled with the assets of other classes of the society.

A table showing the credits to individual members for each age and year of entry and showing opposite each credit the tabular reserve required on the whole life or other plan of insurance specified in the contract, according to assumptions for mortality and interest recognized by the law of this state and adopted by the society, shall be filed by the society with each annual report, and also be furnished to each member before July 1st of each year.

In lieu of the aforesaid statement there may be furnished to each member within the same time a statement giving the credit for such member, and giving the tabular reserve and level rate required for a transfer carrying out the plan of insurance specified in the contract. No table or statement need be made or furnished where the reserves are maintained on the tabular basis.

For this purpose individual bookkeeping accounts for each member shall not be required, and all calculations may be made by actuarial methods.

Nothing herein contained shall prevent the maintenance of such surplus over and above the credits on the accumulation basis and the reserves on the tabular basis pursuant to its law; nor be construed as giving to the individual member any right or claim to any such reserve or credit other than in manner as expressed in the contract and its laws; nor as making any such reserve or credits a liability in determining the legal solvency of the society. (1913, Ch. 191, Pr. 23b.)

§ 5083. EXAMINATION OF DOMESTIC SOCIETIES.] The commissioner of insurance, or any person he may appoint, shall have the power of visitation and examination into the affairs of any domestic society. He may employ assistants for the purpose of such examination, and, he, or any person he may appoint, shall have free access to all the books, papers and documents that relate to the business of the society, and may summon and qualify as witness under oath and examine its officers, agents and employees, or other persons in relation to the affairs, transactions and condition of the society. The expense of such examination shall be paid by the society examined upon statement furnished by the commissioner of insurance, and the examination shall be made at least once in three years.

Whenever, after examination, the commissioner of insurance is satisfied that any domestic society has failed to comply with any provisions of this act, or is exceeding its powers, or is not carrying out its contracts in good faith, or is transacting business fraudulently; or whenever any domestic society, after the existence of one year or more, shall have a membership of less than 400 (or shall determine to discontinue business) the commissioner of insurance may present the facts relating thereto to the attorney general, who shall, if he deems the circumstances warrant, commence an action in quo warranto in a court of competent jurisdiction, and such court shall thereupon notify the officers of such society of a hearing, and if it shall then appear that such society should be closed, said society shall be enjoined from carrying on any further business and some person shall be appointed receiver of such society, and shall proceed at once to take possession of the books, papers, moneys, and other assets of the society, and shall forthwith, under the direction of the

court, proceed to close the affairs of the society and to distribute its funds to those entitled thereto.

No such proceedings shall be commenced by the attorney general against any such society until after notice has been duly served on the chief executive officers of the society and a reasonable opportunity given to it on a date to be named in said notice to show cause why such proceedings should not be commenced. (1913, Ch. 191, Pr. 24.)

§ 5084. APPLICATION FOR RECEIVER, ETC.] No application for injunction against or proceedings for the dissolution of or the appointment of a receiver for any such domestic society or branch thereof shall be entertained by any court in this state unless the same is made by the attorney general. (1913, Ch. 191, Pr. 25.)

§ 5085. EXAMINATION OF FOREIGN SOCIETIES.] The commissioner of insurance, or any person whom he may appoint, may examine any foreign society transacting or applying for admission to transact business in this state. The said commissioner may employ assistants, and he, or any person he may appoint, shall have free access to all the books, papers and documents that relate to the business of the society, and may summon and qualify as witness under oath and examine its officers, agents and employees and other persons in relation to the affairs, transactions and conditions of the society. He may, in his discretion, accept in lieu of such examination the examination of the insurance department of the state, territory, district, province or country where such society is organized. The actual expenses of examiners making any such examination shall be paid by the society upon statement furnished by the commissioner of insurance.

If any such society, or its officers, refuse to submit to such examination, or to comply with the provisions of the section relative thereto, the authority of such society to write new business in this state shall be suspended or license refused until satisfactory evidence is furnished the commissioner relating to the condition and affairs of the society, and during such suspension the society shall not write new business in this state. (1913, Ch. 191, Pr. 26.)

§ 5086. NO ADVERSE PUBLICATIONS.] Pending, during or after an examination or investigation of any such society, either domestic or foreign, the commissioner of insurance shall make public no financial statement, report, or finding, nor shall he permit to become public any financial statement, report or finding affecting the status, standing or rights of any such society until a copy thereof shall have been served upon such society at its home office, nor until such society shall have been afforded a reasonable opportunity to answer any such financial statement, report or finding, and to make such showing in connection therewith as it may desire. (1913, Ch. 191, Pr. 27.)

§ 5087. REVOCATION OF LICENSE.] When the commissioner of insurance, on investigation, is satisfied that any foreign society transacting business under this act has exceeded its powers, or has failed to comply with any provisions of this act, or is conducting business fraudulently, or is not carrying out its contracts in good faith, he shall notify the society of his findings, and state in writing the grounds of his dissatisfaction, and after reasonable notice require said society, on a date named, to show cause why its license should not be revoked. If on the date named in said notice such objections have not been

removed to the satisfaction of the said commissioner of insurance, or the society does not present good and sufficient reasons why its authority to transact business in this state should not at that time be revoked, he may revoke the authority of the society to continue business in this state. All decisions and findings of the commissioner made under the provisions of this section may be reviewed by the proper proceedings in any court of competent jurisdiction, as provided in section 5073. (1913, Ch. 191, Pr. 28.)

§ 5088. EXEMPTION OF CERTAIN SOCIETIES.] Nothing contained in this act shall be construed to effect or apply to grand or subordinate lodges of Masons, Odd Fellows or Knights of Pythias (exclusive of the insurance department of the Supreme Lodge Knights of Pythias), and the Junior Order of the United American Mechanics (exclusive of the beneficiary degree of insurance branch of the National Council Junior Order United American Mechanics), or societies which limit their membership to any one hazardous occupation, nor to similar societies which do not issue insurance certificates, nor to an association of local lodges of a society now doing business in this state, which provides death benefits not exceeding five hundred dollars to any one person, or disability benefits not exceeding three hundred dollars in any one year to any one person, or both, nor to any contracts of reinsurance business on such plan in this state, nor to domestic societies which limit their membership to the employees of a particular city or town, designated firm, business house, or corporation, nor to domestic lodges, orders, or association of a purely religious, charitable and benevolent description, which do not provide for a death benefit of more than one hundred dollars, or for disability benefits of more than one hundred and fifty dollars to any one person in any one year. The commissioner of insurance may require from any such society such information as will enable him to determine whether such society is exempt from the provisions of this act.

Any fraternal benefit society, heretofore organized and incorporated and operating within the definition set forth in sections 5059, 5060 and 5061 of this article, providing for benefits in case of death or disability resulting solely from accidents, but which does not obligate itself to pay death or sick benefits, may be licensed under the provisions of this act, and shall have all the privileges and shall be subject to all the provisions and regulations of this act, except that the provisions of this act requiring medical examinations, valuations of benefit certificates, and that the certificate shall specify the amount of benefits, shall not apply to such society. (1913, Ch. 191, Pr. 29.)

§ 5089. TAXATION.] Every fraternal benefit society organized or licensed under this act is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every state, county, district, municipal, and school tax, other than taxes on real estate and office equipment. (1913, Ch. 191, Pr. 30.)

Fraternal benefit society as a benevolent or charitable association within exemption statutes. 7 L. R. A. (N. S.) 380.

§ 5090. PENALTIES.] Any person, officer, member or examining physician of any society authorized to do business under this article shall knowingly or wilfully make any false or fraudulent statement or representation in or with reference to any application for membership, or for the purpose of obtaining

money from or benefit in any society transacting business under this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment in the county jail for not less than thirty days nor more than one year, or both, in the discretion of the court; and any person who shall willfully make a false statement of any material fact or thing in a sworn statement as to the death or disability of a certificate holder in any such society for the purpose of procuring payment of a benefit named in the certificate of such holder, and any person who shall willfully make any false statement in any verified report or declaration under oath required or authorized by this state, shall be guilty of perjury, and shall be proceeded against and punished as provided by the statutes of this state in relation to the crime of perjury.

Any person who shall solicit membership for, or in any manner assist in procuring membership in any fraternal benefit society not licensed to do business in this state, or who shall solicit membership for, or in any manner assist in procuring membership in any such society not authorized, as herein provided, to do business, as herein defined in this state, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty or more than two hundred dollars.

Any society, or any officer, agent or employee thereof neglecting or refusing to comply with, or violating any of the provisions of this act, the penalty for which neglect, refusal or violation is not specified in this section, shall be fined not exceeding two hundred dollars upon conviction thereof. (1913, Ch. 191, Pr. 31.)

CHAPTER 77.

INSURANCE IN GENERAL.

- ARTICLE 1. Definition of insurance, 6458.
2. What may be insured, 6459-6460a.
 3. Parties to the contract, 6461-6465.
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ARTICLE 1—DEFINITION OF INSURANCE.

§ 6458. DEFINED.] Insurance is a contract whereby one undertakes to indemnify another against loss, damage or liability arising from an unknown or contingent event. (R. C. 1905, § 5890.)

Corporation undertaking to guarantee fixed revenue per acre for farm lands is an insurance company within statute. *State v. Hogan*, 8 N. D. 301, 78 N. W. 1051, 73 A. S. R. 759, 45 L. R. A. 166.

Insurer is entitled to such interpretation of clause making policy void because of increase of hazard occasioned by insured as will include mortgage place upon property insured. *Lawyer v. Globe Mut. Ins. Co.*, 25 S. D. 549, 127 N. W. 615.

What constitutes insurance. 47 L. R. A. (N. S.) 290.

ARTICLE 2--WHAT MAY BE INSURED.

§ 6459. INSURABLE INTEREST.] Any contingent or unknown event, whether past or future, which may damnify a person having an insurable interest or create a liability against him may be insured against, subject to the provisions of this chapter, with the exception of an insurance for or against the drawing of any lottery or for or against any chance or ticket in a lottery drawing a prize. (R. C. 1905, § 5891.)

§ 6460. INSURANCE CLASSIFIED.] The most usual kinds of insurance are:

1. Marine insurance.
2. Fire insurance.
3. Life insurance.
4. Health insurance; and
5. Accident insurance. (R. C. 1905, § 5892.)

§ 6460a. ALL KINDS SUBJECT TO CHAPTER.] All kinds of insurance are subject to the provisions of this chapter. (R. C. 1905, § 5893.)

Mutual fire insurance company is as effectively bound by section 1849 (6515 herein) as an insurance company organized on any other basis. *Peever Mercantile Co. v. State Mut. F. Ins. Co.*, 25 S. D. 406, 127 N. W. 559.

ARTICLE 3--PARTIES TO THE CONTRACT.

§ 6461. INSURER AND INSURED DEFINED.] The person who undertakes to indemnify another by a contract of insurance is called the insurer and the person indemnified is called the insured. (R. C. 1905, § 5894.)

§ 6462. WHO MAY INSURE.] Any one who is capable of making a contract may be an insurer, subject to the restrictions imposed by special statutes upon foreign corporations, non-residents and others. (R. C. 1905, § 5895.)

§ 6463. WHO MAY BE INSURED.] Any one except a public enemy may be insured. (R. C. 1905, § 5896.)

§ 6464. INSURANCE OF MORTGAGED PROPERTY.] When a mortgagor of property effects insurance in his own name, providing that the loss shall be payable to the mortgagee, or assigns a policy of insurance to the mortgagee, the insurance is deemed to be upon the interest of the mortgagor, who does not cease to be a party to the original contract and any act of his which would otherwise avoid the insurance will have the same effect, although the property is in the hands of the mortgagee. (R. C. 1905, § 5897.)

Failure to give notice under mortgage clause agreement of material changes in property will avoid policy. *Ormsby v. Ins. Co.*, 5 S. D. 72, 58 N. W. 301.

Liability of mortgagee for premium. *St. Paul Ins. Co. v. Upton*, 2 N. D. 229, 50 N. W. 702.

Mortgagee to whom policy is made payable may sue alone when his claims exceed amount of insurance. *Travelers' Ins. Co. v. Ins. Co.*, 1 N. D. 151, 45 N. W. 703.

Application of proceeds of insurance on mortgaged premises. 118 Am. St. Rep. 968.

Forfeiture of insurance as against mortgagees for breach of condition. 58 Am. St. Rep. 667.

Rights of mortgagee under an insurance on the mortgaged property. 54 Am. Dec. 693.

§ 6465. SAME. NEW CONTRACT.] If an insurer assents to the transfer of an insurance from a mortgagor to a mortgagee and at the time of his assent imposes further obligations on the assignee, making a new contract with him, the acts of the mortgagor cannot affect his right. (R. C. 1905, § 5898.)

ARTICLE 4—INSURABLE INTEREST.

§ 6466. DEFINED.] Every interest in the property, or any relation thereto, or liability in respect thereof of such a nature that a contemplated peril might directly damnify the insured is an insurable interest. (R. C. 1905, § 5899.)

What is insurable interest in property. 7 Am. Dec. 42; 20 Am. Dec. 510.

Insurable interest in unfinished building during its construction by a contractor. 43 L. R. A. 664.

—Of sole and absolute owner of building and land not belonging to him. 38 L. R. A. (N. S.) 429.

—Of one secondarily liable on an obligation, in property primarily charged with the same. 9 L. R. A. (N. S.) 490.

—Of tenant in leased property. 42 L. R. A. (N. S.) 135.

—Of husband in wife's property, or that in which she is interested. 66 L. R. A. 658.

§ 6467. CLASSIFIED.] An insurable interest in property may consist in:

1. An existing interest.
2. An inchoate interest founded on an existing interest; or,
3. An expectancy coupled with an existing interest in that out of which the expectancy arises. (R. C. 1905, § 5900.)

§ 6468. CARRIER OR DEPOSITARY HAS.] A carrier or depositary of any kind has an insurable interest in a thing held by him as such to the extent of its value. (R. C. 1905, § 5901.)

§ 6469. CONTINGENT OR EXPECTANT INTEREST NOT.] A mere contingent or expectant interest in anything, not founded on an actual right to the thing, nor upon valid contract for it, is not insurable. (R. C. 1905, § 5902.)

§ 6470. MEASURE OF.] The measure of an insurable interest in property is the extent to which the insured might be damnified by loss or injury thereof. (R. C. 1905, § 5903.)

§ 6471. INSURANCE WITHOUT INTEREST VOID.] The sole object of insurance is the indemnity of the insured and if he has no insurable interest the contract is void. (R. C. 1905, § 5904.)

Insurable interest in the life of another, and necessity of. Am. Dec. 93; 46 Am. Rep. 189; 52 Am. Rep. 135; 58 Am. Rep. 852; 128 Am. St. Rep. 302.

When life insurance regarded as wagering contract because of the small insurable interest. 60 Am. Rep. 729.

Insurance "for whom it may concern." 16 Am. Dec. 323.

§ 6472. WHEN INTEREST MUST EXIST.] An interest insured must exist when the insurance takes effect and when the loss occurs, but need not exist in the meantime. (R. C. 1905, § 5905.)

Company not liable if insured had no interest in insured property at time of loss. *Tierney v. Ins. Co.*, 4 N. D. 565, 62 N. W. 642; *Ormsby v. Ins. Co.*, S. D. 72, 58 N. W. 301.

Immaterial variance as to incumbrance, value or size of property will not vitiate policy. *McNamara v. Ins. Co.*, 1 S. D. 342, 47 N. W. 288.

When insurable interest must exist under fire policies. 52 L. R. A. 330.

§ 6473. WHEN CHANGE OF INTEREST SUSPENDS INSURANCE.] Except in the cases specified in the next five sections and in the cases of life, accident and health insurance, a change of interest in any part of a thing insured, unaccompanied by a corresponding change of interest in the insurance, suspends the insurance to an equivalent extent, until the interest in the thing, and the interest in the insurance are vested in the same person. (R. C. 1905, § 5906.)

When sale or alienation of property avoids insurance. 28 Am. Dec. 154.

§ 6474. CHANGE AFTER LOSS DOES NOT AFFECT.] A change of interest in a thing insured after the occurrence of an injury which results in a loss does not affect the right of the insured to indemnity for the loss. (R. C. 1905, § 5907.)

§ 6475. CHANGE IN ONE OF SEVERAL THINGS.] A change of interest in one or more of several distinct things insured by one policy does not avoid the insurance as to the others. (R. C. 1905, § 5908.)

§ 6476. INCUMBRANCE OR REINSURANCE OF ONE OF SEVERAL THINGS.] The procurement of any other contract of insurance upon or the incumbrance of one or more of the several distinct things insured by one policy does not render void any insurance upon the things not covered by such other contract of insurance or incumbrance; but in case of loss or damage such an amount shall be deducted from the insurance as the value of the property so incumbered or doubly insured bears to the value of all the property covered by the policy. Any agreement made to waive the provisions of this or the preceding section is void. (R. C. 1905, § 5909.)

Policy covering building and personal property, having separate amounts on each must be treated as separate policies. *First Nat. Bank v. German American Ins. Co.*, 23 N. D. 139, 38 L. R. A. (N. S.) 213, 134 N. W. 873.

Mortgage as terminating insurable interest in property. 38 L. R. A. 562.

§ 6477. CHANGE OF INTEREST BY DEATH.] A change of interest by will or succession on the death of the insured does not avoid an insurance, and his interest in the insurance passes to the person taking his interest in the thing insured. (R. C. 1905, § 5910.)

§ 6478. CHANGE AMONG JOINT OWNERS.] A transfer of interest by one of several partners, joint owners or owners in common who are jointly insured to the others does not avoid an insurance, even though it has been agreed that the insurance shall cease upon an alienation of the thing insured. (R. C. 1905, § 5911.)

Whether sale by one partner to another, whether amounts to change of title. 49 Am. Rep. 22; 52 Am. Rep. 442.

§ 6479. STIPULATION OF INTEREST VOID.] Every stipulation in a policy of insurance for the payment of loss whether the person insured has or has not any interest in the property insured or that the policy shall be received as proof of such interest and every policy executed by way of gaming or wagering is void. (R. C. 1905, § 5912.)

ARTICLE 5—CONCEALMENT AND REPRESENTATION.

§ 6480. CONCEALMENT DEFINED.] A neglect to communicate that which a party knows and ought to communicate is called a concealment. (R. C. 1905, § 5913.)

Concealment of facts by insured in case of Lloyds Policies. 55 L. R. A. 201.

Duty to notify insurer of facts which develop after submission of application, but before delivery of policy or certificate. 39 L. R. A. (N. S.) 951.

§ 6481. RESCISSION ON ACCOUNT OF.] A concealment, whether intentional or unintentional, entitles the injured party to rescind a contract of insurance. (R. C. 1905, § 5914.)

When concealment or misrepresentation avoid insurance. 35 Am. Rep. 629.

§ 6482. MUTUAL DISCLOSURES.] Each party to a contract of insurance must communicate to the other in good faith all facts within his knowledge which are or which he believes to be material to the contract and which the other has not the means of ascertaining and as to which he makes no warranty. (R. C. 1905, § 5915.)

§ 6483. WHAT NOT BOUND TO DISCLOSE.] Neither party to a contract of insurance is bound to communicate information of the matters following, except in answer to the inquiries of the other:

1. Those which the other knows.
2. Those which in the exercise of ordinary care the other ought to know and of which the former has no reason to suppose him ignorant.
3. Those of which the other waives communication.
4. Those which prove or tend to prove the existence of a risk excluded by a warranty and which are not otherwise material; and,
5. Those which relate to a risk excepted from the policy and which are not otherwise material. (R. C. 1905, § 5916.)

§ 6484. HOW MATERIALITY DETERMINED.] Materiality is to be determined not by the event, but solely by the probable and reasonable influence of the facts upon the party to whom the communication is due in forming his estimate of the disadvantages of the proposed contract or in making his inquiries. (R. C. 1905, § 5917.)

Materiality of representation. *Waterbury v. Ins. Co.*, 6 D. 468, 43 N. W. 697.

§ 6485. PRESUMPTION OF KNOWLEDGE.] Each party to a contract of insurance is bound to know all the general causes which are open to his inquiry, equally with that of the other and which may affect either the political or material perils contemplated, and all general usages of trade. (R. C. 1905, § 5918.)

§ 6486. RIGHT TO INFORMATION WAIVED.] The right to information of

material facts may be waived, either by the terms of insurance, or by neglect to make inquiries as to such facts, when they are distinctly implied in other facts of which information is communicated. (R. C. 1905, § 5919.)

Life insurance agents accepting insurance when they know answers in the application are false. 7 Am. Rep. 128.

§ 6487. INFORMATION AS TO INTEREST.] Information of the nature or amount of the interest of the one insured need not be communicated unless in answer to inquiry, except as prescribed by section 5937. (R. C. 1905, § 5920.)

Clause avoiding policy in case property is incumbered not waived by insurer's neglect to make inquiry if such incumbrance is a chattel mortgage. *Harding v. Ins. Co.*, 10 S. D. 64, 71 N. W. 755.

How far an undivided interest in property is a complete or full ownership for the purpose of insurance. 18 L. R. A. 481.

Vendee under executory contract is owner, where vendee holds legal title. 20 L. R. A. (N. S.) 775.

Retention of policy as waiver of mistake or fraud as to state of title. 67 L. R. A. 731.

Effect of broker's knowledge as to title. 38 L. R. A. (N. S.) 637.

Conclusiveness of statements as to ownership, etc., in proof of loss. 44 L. R. A. 859.

§ 6488. RESCISSION FOR FRAUDULENT CONCEALMENT.] An intentional and fraudulent omission on the part of one insured to communicate information of matters proving or tending to prove the falsity of a warranty entitles the insurer to rescind. (R. C. 1905, § 5921.)

§ 6489. MATTERS OF OPINION.] Neither party to a contract of insurance is bound to communicate even upon inquiry information of his own judgment upon the matters in question. (R. C. 1905, § 5922.)

§ 6490. FORM OF REPRESENTATION.] A representation may be oral or written. (R. C. 1905, § 5923.)

§ 6491. WHEN MAY BE MADE.] A representation may be made at the same time with issuing the policy or before it. (R. C. 1905, § 5924.)

§ 6492. RULES OF INTERPRETATION.] The language of a representation is to be interpreted by the same rules as the language of contracts in general. (R. C. 1905, § 5925.)

Failure to build a chimney as promised will not avoid policy. *Waterbury v. Ins. Co.*, 6 D. 468, 43 N. W. 697.

Warranties and representations and their effect. 16 Am. Dec. 462; 59 Am. Rep. 816.

§ 6493. WHAT DEEMED PROMISE.] A representation as to the future is to be deemed a promise, unless it appears that it was merely a statement of belief or expectation. (R. C. 1905, § 5926.)

§ 6494. CANNOT QUALIFY CONTRACT; MAY, IMPLIED WARRANTY.] A representation cannot be allowed to qualify an express provision in a contract of insurance; but it may qualify an implied warranty. (R. C. 1905, § 5927.)

§ 6495. WHEN MAY BE WITHDRAWN.] A representation may be altered or withdrawn before the insurance is effected, but not afterwards. (R. C. 1905, § 5928.)

§ 6496. TIME TO WHICH REFERS.] The completion of the contract of in-

surance is the time to which a representation must be presumed to refer. (R. C. 1905, § 5929.)

§ 6497. ON INFORMATION AND BELIEF.] When a person insured has no personal knowledge of a fact, he may, nevertheless, repeat information which he has upon the subject and which he believes to be true with the explanation that he does so on the information of others, or he may submit the information in its whole extent to the insurer; and in neither case is he responsible for its truth, unless it proceeds from an agent of the insured whose duty it is to give the intelligence. (R. C. 1905, § 5930.)

§ 6498. WHEN DEEMED FALSE.] A representation is to be deemed false when the facts fail to correspond with its assertions or stipulations. (R. C. 1905, § 5931.)

§ 6499. EFFECT OF FALSITY.] If a representation is false in a material point, whether affirmative or promissory, the injured party is entitled to rescind the contract from the time when the representation becomes false. (R. C. 1905, § 5932.)

Life insurance agents accepting insurance when they know answers in the application are false. 7 Am. Rep. 128.

Right of insured to return of premium where policy is void or voidable because of misrepresentations on his part. 32 L. R. A. (N. S.) 298.

§ 6500. HOW MATERIALITY DETERMINED.] The materiality of a representation is determined by the same rule as the materiality of a concealment. (R. C. 1905, § 5933.)

§ 6501. WHEN NOT MATERIAL.] No oral or written misrepresentation made in the negotiation of a contract or policy of insurance by the insured or in his behalf shall be deemed material or defeat or avoid the policy or prevent its attaching, unless such misrepresentation is made with actual intent to deceive, or unless the matter misrepresented increased the risk of loss. (R. C. 1905, § 5934.)

Misrepresentation referred to in statute includes statements in applications for insurance, called warranties, by law of insurance. *Soules v. Brotherhood of American Yeomen*, 19 N. D. 23, 120 N. W. 760.

§ 6502. MODIFICATION. RESCISSION.] The provisions of this article apply as well to a modification of a contract of insurance as to its original formation. Whenever a right to rescind a contract of insurance is given to the insured by any provision of this chapter such right may be exercised at any time previous to the commencement of an action on the contract. (R. C. 1905, § 5935.)

ARTICLE 6—THE POLICY.

§ 6503. DEFINED.] The written instrument in which a contract of insurance is set forth is called a policy of insurance. (R. C. 1905, § 5936.)

§ 6504. WHAT MUST SPECIFY.] A policy of insurance must specify:

1. The parties between whom the contract is made.
2. The rate of premium.
3. The property or life insured.
4. The interest of the insured in property insured, if he is not the absolute owner thereof.
5. The risks insured against; and,

6. The period during which the insurance is to continue. (R. C. 1905, § 5937.)

As to similar provision in Cal. Civ. Code, § 2557, see *Davis v. Phoenix Ins. Co.*, 111 Cal. 409, 43 Pac. 1115.

4. Effect of bond for title to defeat unconditional and sole ownership. 2 L. R. A. (N. S.) 512.

Vendors lien as affecting sole and unconditional ownership. 7 L. R. A. (N. S.) 627.

Failure to record conveyance to insured as affecting his "sole and unconditional ownership." 22 L. R. A. (N. S.) 732.

Title for purpose of insurance, of house on government land under homestead entry, as within sole and unconditional ownership clause in insurance policy. 8 L. R. A. (N. S.) 903.

Want of title to land where insured is sole and absolute owner of building. 38 L. R. A. (N. S.) 427.

§ 6505. APPLIED ONLY TO INTEREST.] When the name of the person intended to be insured is specified in a policy, it can be applied only to his own proper interest. (R. C. 1905, § 5938.)

§ 6506. INSURANCE BY TRUSTEE OR AGENT.] When an insurance is made by an agent or trustee, the fact that his principal or beneficiary is the person really insured may be indicated by describing him as an agent or trustee or by other general words in the policy. (R. C. 1905, § 5939.)

§ 6507. TERMS GOVERN JOINT OR COMMON INTEREST.] To render an insurance effected by one partner or part owner, applicable to the interest of his co-partners or of other part owners, it is necessary that the terms of the policy should be such as are applicable to the joint or common interest. (R. C. 1905, § 5940.)

§ 6508. ONLY PERSON INTENDED MAY CLAIM BENEFIT.] When the description of the insured in a policy is so general that it may comprehend any person or any class of persons, he only can claim the benefit of the policy who can show that it was intended to include him. (R. C. 1905, § 5941.)

Insuring under an assumed name. *Pollard v. Ins. Co.*, 1 S. D. 570, 47 N. W. 1060.

Condition rendering policy void on procuring additional insurance without consent of company cannot be waived by agent whose agency has expired. *Smith v. Ins. Co.*, 6 D. 433, 43 N. W. 810.

Representations in application signed by agent disregarded. *South Bend Toy Co. v. Ins. Co.*, 2 S. D. 17, 48 N. W. 310.

Knowledge of facts by agent may be a waiver. *Lyon v. Ins. Co.*, 6 D. 67, 50 N. W. 483.

Devesture of title by sheriff's deed being proved it is error to allow plaintiff to show deed to be void. *Tierney v. Ins. Co.*, 4 N. D. 565, 62 N. W. 642.

Failure of mortgagee to notify company of changes in condition of property. *Ormsby v. Ins. Co.*, 5 S. D. 72, 58 N. W. 301.

False statement in application and medical examination for life insurance constitute breach of warranty. *Knudson v. Legion of Honor*. 7 S. D. 214, 63 N. W. 911.

§ 6509. **BENEFIT OF ANY OWNER.]** A policy may be so framed that it will inure to the benefit of whomsoever during the continuance of the risk may become the owner of the interest insured. (R. C. 1905, § 5942.)

§ 6510. **TRANSFER SUSPENDS.]** The mere transfer of a thing insured does not transfer the policy, but suspends it until the same person becomes owner of both the policy and the thing insured. (R. C. 1905, § 5943.)

§ 6511. **CLASSIFIED.]** A policy is either open or valued. (R. C. 1905, § 5944.)

§ 6512. **OPEN.]** An open policy is one in which the value of the thing insured is not agreed upon, but is left to be ascertained in case of loss. (R. C. 1905, § 5945.)

§ 6513. **VALUED.]** A valued policy is one which expresses on its face an agreement that the thing insured shall be valued at a specified sum. (R. C. 1905, § 5946.)

Under standard policy, value of real property on total loss is conclusively fixed by total of all insurance written therein which is amount of policy and concurrent insurance. *Lawyer v. Globe Mut. Ins. Co.*, 25 S. D. 549, 127 N. W. 615.

§ 6514. **RUNNING.]** A running policy is one which contemplates successive insurances and which provides that the object of the policy may be from time to time defined, especially as to the subjects of insurance, by additional statements or indorsements. (R. C. 1905, § 5947.)

§ 6515. **RECEIPTS FOR PREMIUM. EFFECT OF.]** An acknowledgment in a policy of the receipt of premium is conclusive evidence of its payment so far as to make the policy binding, notwithstanding any stipulation therein that it shall not be binding until the premium is actually paid. (R. C. 1905, § 5948.)

Is not unconstitutional because it declares that receipt of premium acknowledged in policy is conclusive evidence of payment. *Peever Mercantile Co. v. State Mut. F. Ins. Co.*, 25 S. D. 406, 127 N. W. 559.

Insurance company acknowledging receipt of premium in renewal policy cannot deny same in action on policy. *Peever Mercantile Co. v. State Mut. F. Asso.*, 23 S. D. 1, 119 N. W. 1008.

Insurance company cannot be permitted to show that actual date of issuance of policy was of later date than date recited in policy, where policy acknowledges receipt of premium. *Harrington v. Mutual L. Ins. Co.*, 21 N. D. 447, 34 L. R. A. (N. S.) 373, 131 N. W. 246.

Policy becomes binding on its delivery to insured, though it contains condition that policy shall not take effect until actual payment of first premium. *Chasse v. Bankers' Reserve Fund L. Ins. Co.*, 27 S. D. 70, 129 N. W. 568.

Waiver of conditions requiring payment of premium before delivery of policy. 57 Am. Rep. 514.

As to similar provision in Cal. Civ. Code, section 2598, see *Palmer v. Continental Ins. Co.*, 132 Cal. 68, 64 Pac. 97.

§ 6516. **AGREEMENT NOT TO TRANSFER VOID.]** An agreement made before a loss not to transfer the claim of a person insured against the insurer after the loss has happened is void. (R. C. 1905, § 5949.)

§ 6517. **HOLDER MAY SURRENDER FOR CANCELLATION.]** The holder of any

policy of insurance against loss or damage to property by fire or other casualty hereafter issued by any insurance company doing or contract to the contrary, at any time surrender the same for cancellation; and upon such surrender the company issuing such policy shall retain or receive such proportion and not more of the premium paid or agreed to be paid as corresponds with the usual short rates upon term policies as adopted and maintained by the Minnesota and Dakota fire underwriters' union of St. Paul, Minnesota, for the time the policy remained in force. (R. C. 1905, § 5950.)

§ 6518. NOTICE NECESSARY TO FORFEIT.] No such policy of insurance shall by virtue of any condition or provision thereof be forfeited, suspended or impaired for non-payment of any note or obligation taken for the premium, or any part thereof, unless the insurer shall, not less than thirty days prior to the maturity of such premium, note or obligation, mail, postage prepaid, to the assured at his usual postoffice a notice stating:

1. The date when such note or obligation will become due.
2. The amount of principal and interest that will then be due.
3. The effect upon the policy of non-payment.
4. Such notice shall further inform the assured of his right at his own election either to pay in full and keep the policy in full force, or to terminate the insurance by surrendering the policy and paying such part of the whole premium as it shall have earned and must further state the amount which the assured is lawfully required to pay, or which on account of previous payment may be due him in case of his election to terminate the insurance on the day of the maturity of the premium, note or obligation. (R. C. 1905, § 5951.)

Notice to insured that premium note falls due on certain date not sufficient to forfeit policy for non-payment of premium. *Epiphany Catholic Church v. Ins. Co.*, 16 S. D. 17, 91 N. W. 332.

Notice mailed twenty-three days before premium note falls due is insufficient. *Epiphany R. C. Church v. German Ins. Co.*, 16 S. D. 17, 91 N. W. 332.

First and last days in computing time for notice of premiums. 49 L. R. A. 208.

Mode of proving mailing of notice of maturity of premiums or assessments. 7 L. R. A. (N. S.) 238.

Necessity that notice of maturity of premiums or assessments sent through the mail be received. 7 L. R. A. (N. S.) 253.

Effect of custom to give insured notice of maturity of premium where insured is not otherwise entitled to notice. 20 L. R. A. (N. S.) 1037.

ARTICLE 7—WARRANTIES.

§ 6519. CLASSIFIED.] A warranty is either express or implied. (R. C. 1905, § 5952.)

Policy of insurance cannot be avoided after loss where premium was received with full knowledge of facts. *Leisen v. St. Paul F. & M. Ins. Co.*, 20 N. D. 316, 30 L. R. A. (N. S.) 539, 127 N. W. 837.

Warranties and representations and their effect. 16 Am. Rep. 816.

§ 6520. NO FORM NECESSARY.] No particular form of words is necessary to create a warranty. (R. C. 1905, § 5953.)

Warranties in case of Lloyds policies. 55 L. R. A. 202.

When may statements be regarded as representations, although expressly denominated in the policy as warranties. 11 L. R. A. (N. S.) 981.

When answers concerning watchmen deemed to be warranties. 33 Am. Rep. 832.

§ 6521. EXPRESS, MUST BE WRITTEN.] Every express warranty made at or before the execution of a policy must be contained in the policy itself, or in another instrument signed by the insured and referred to in the policy as making a part of it. (R. C. 1905, § 5954.)

§ 6522. TO WHAT TIME MAY RELATE.] A warranty may relate to the past, the present, the future or to any or all of these. (R. C. 1905, § 5955.)

§ 6523. WHAT STATEMENT OF FACT IS EXPRESS WARRANTY.] A statement in a policy of a matter relating to the person or thing insured or to the risk as a fact is an express warranty thereof. (R. C. 1905, § 5956.)

Policy of insurance cannot be avoided after loss where premium was received with full knowledge of facts. *Leisen v. St. Paul F. & M. Ins. Co.*, 20 N. D. 316, 30 L. R. A. (N. S.) 539, 127 N. W. 837.

On representations and promises made in application for policy as immaterial because policy does comply with this section. *Farmers' & M. State Bank v. United States Fidelity & G. Co.*, 28 S. D. 315, 36 L. R. A. (N. S.) 1152, 133 N. W. 247.

As to similar provision in Cal. Civ. Code, section 2607, see *National Bank v. Union Ins. Co.*, 88 Cal. 497, Am. St. Rep. 324; 26 Pac. 509.

§ 6524. STATEMENT OF INTENTION A WARRANTY.] A statement in a policy, which imports that it is intended to do or not to do a thing which materially affects the risk, is a warranty that such act or omission shall take place. (R. C. 1905, § 5957.)

§ 6525. AS TO FUTURE, WHEN NEED NOT BE FULFILLED.] When before the time arrives for the performance of a warranty relating to the future a loss insured against happens or performance becomes unlawful at the place of the contract or impossible, the omission to fulfill the warranty does not avoid the policy. (R. C. 1905, § 5958.)

§ 6526. RESCISSION FOR VIOLATION OF MATERIAL.] The violation of a material warranty or other material provision of a policy on the part of either party thereto entitles the other to rescind. (R. C. 1905, § 5959.)

§ 6527. WHAT AVOIDS POLICY.] A policy may declare that a violation of specified provisions thereof shall avoid it; otherwise the breach of an immaterial provision does not avoid the policy. (R. C. 1905, § 5960.)

Forfeiture waived by demanding judgment for premium note. *Johnson v. Ins. Co.*, 1 N. D. 167, 45 N. W. 799.

Undisclosed incumbrances will avoid policy. *Peet v. Ins. Co.*, 7 S. D. 410, 64 N. W. 206.

Policy of insurance cannot be avoided after loss where premium was received with full knowledge of facts. *Leisen v. St. Paul F. & M. Ins. Co.*, 20 N. D. 316, 30 L. R. A. (N. S.) 539, 127 N. W. 837.

§ 6528. BREACH WITHOUT FRAUD.] A breach of warranty without fraud merely exonerates an insurer from the time that it occurs, or when it is broken in its inception, prevents the policy from attaching to the risk. (R. C. 1905, § 5961.)

Policy of insurance cannot be avoided after loss where premium was received with full knowledge of the facts. *Leisen v. St. Paul F. & M. Ins. Co.*, 20 N. D. 316, 30 L. R. A. (N. S.) 539, 127 N. W. 837.

ARTICLE 8—PREMIUM.

§ 6529. WHEN PREMIUM PAYABLE.] An insurer is entitled to the payment of the premium as soon as the thing insured is exposed to the peril insured against. (R. C. 1905, § 5962.)

What amounts to waiver of payment of premium. 29 Am. Rep. 777.

As to similar provision in Cal. Civ. Code. Section 2616, *Joshua Hendy Mach. Works v. American Steam Boiler Ins. Co.*, 86 Cal. 248, 21 Am. St. Rep. 33, 24 Pac. 1018.

§ 6530. WHEN INSURED ENTITLED TO RETURN.] A person insured is entitled to return of premium as follows:

1. To the whole of the premium if no part of his interest in the thing insured is exposed to any of the perils insured against.

2. When the insurance is made for a definite period of time and the insured surrenders his policy, to such proportion of the premium as corresponds with the unexpired time after deducting from the whole premium any claim for loss or damage under the policy which has previously accrued. (R. C. 1905, § 5963.)

Premium note past due is collectible though policy is void while due and unpaid. *St. Paul Ins. Co. v. Coleman*, 6 D. 458, 43 N. W. 693; *St. Paul Ins. Co. v. Neidecken*, 6 D. 494, 43 N. W. 696; *Johnson v. Ins. Co.*, 1 N. D. 167, 56 N. W. 799.

Breach of agreement of insurer to make loan on policy as justifying rescission and recovery of premiums by insured. 30 L. R. A. (N. S.) 1202.

Right of insured to return of premium where insurer seeks rescission on ground of misrepresentation by insured. 32 L. R. A. (N. S.) 299.

As to similar provision in Cal. Civ. Code, section 2617, see *Joshua Hendy Mach. Works v. American Steam Boiler Ins. Co.*, 86 Cal. 248, 21 Am. St. Rep. 33, 24 Pac. 1018.

§ 6531. PREMIUM DEFINED.] The term premium within the meaning of sections 6517, 6518 and 6530 includes policy fees in excess of two dollars on any one policy and all other sums of money paid or agreed to be paid in consideration of the policy of insurance. (R. C. 1905, § 5964.)

§ 6532. RETURN WHEN INSURANCE IS VOIDABLE.] A person insured is entitled to a return of the premium when the contract is voidable on account of the fraud or misrepresentation of the insurer or on account of facts of the existence of which the insured was ignorant without his fault; or when by any default of the insured other than actual fraud, the insurer never incurred any liability under the policy. (R. C. 1905, § 5965.)

Return of assessment on benefit certificate proving void for fraud. 3 L. R. A. (N. S.) 114.

Reason of insured to return of premium where policy is void or voidable because of misrepresentations on his part. 32 L. R. A. (N. S.) 298.

§ 6533. NOT ENTITLED TO RETURN.] If a peril insured against has existed and the insurer has been liable for any period, however short, the insured is

not entitled to a return of premium so far as that particular risk is concerned, unless the insurance was for a definite period of time, in which case he is entitled to a proportionate return under sections 6517 and 6530. (R. C. 1905, § 5966.)

§ 6534. RETURN IN OVER INSURANCE BY SEVERAL.] In case of an over insurance by several insurers the insured is entitled to a ratable return of the premium, proportioned to the amount by which the aggregate sum insured in all the policies exceeds the insurable value of the thing at risk. (R. C. 1905, § 5967.)

§ 6535. CONTRIBUTION TO RETURN.] When an over insurance is effected by simultaneous policies the insurers contribute to the premium to be returned in proportion to the amount insured by their respective policies. (R. C. 1905, § 5968.)

§ 6536. SAME.] When an over insurance is effected by successive policies, those only contribute to a return of the premium who are exonerated by prior insurances from the liability assumed by them and in proportion as the sum for which the premium was paid exceeds the amount for which on account of prior insurance they could be made liable. (R. C. 1905, § 5969.)

ARTICLE 9—LOSS.

§ 6537. WHEN INSURER LIABLE.] An insurer is liable for a loss of which a peril insured against was the proximate cause, although a peril not contemplated by the contract may have been a remote cause of the loss; but he is not liable for a loss of which the peril insured against was only a remote cause. (R. C. 1905, § 5970.)

Losses for which insurer is liable. 36 Am. St. Rep. 852.

What included in fire, loss by. 45 Am. Dec. 657; 23 Am. St. Rep. 915; 133 Am. St. Rep. 1087.

What is proximate cause of loss. 36 Am. St. Rep. 852.

Custom to pay certain class of losses as affecting liability of insurer for such a loss not covered by the policy. 19 L. R. A. (N. S.) 421.

Retention of policy as waiver of mistake or fraud of insurer or agent as to provisions as to risks insured against. 67 L. R. A. 711.

Loss by lightning. 26 L. R. A. 267.

§ 6538. LIABLE FOR LOSS IN RESCUING.] An insurer is liable when the thing insured is rescued from a peril insured against that would otherwise have caused a loss, if in the course of such rescue the thing exposed to peril, not insured against, which permanently deprives the insured of its possession in whole or in part; or when a loss is caused by efforts to rescue the thing insured from a peril insured against. (R. C. 1905, § 5971.)

§ 6539. NOT LIABLE FOR PERIL EXCEPTED.] When a peril is specially excepted in a contract of insurance, a loss which would not have occurred but for such peril is thereby excepted, although the immediate cause of the loss was a peril which was not excepted. (R. C. 1905, § 5972.)

Does general requirement as to external, violent and accidental means apply to a separate provision as to liability in case of death or injury from certain specified causes. 27 L. R. A. (N. S.) 480.

When death or injury may be deemed to have been caused by accidental

means, though the voluntary act of insured was the primary cause thereof. 5 L. R. A. (N. S.) 657.

§ 6540. WILLFUL ACT EXONERATES; NEGLIGENCE NOT.] An insurer is not liable for a loss caused by the willful act of the insured; but he is not exonerated by the negligence of the insured or of his agents or others. (R. C. 1905, § 5973.)

Negligence of assured will not avoid policy. *Angier v. Ins. Co.*, 10 S. D. 82, 71 N. W. 761, 65 Am. St. Rep. 685.

Policy holder cannot recover for loss of personal property where he did not exercise proper diligence to save same. *First National Bank v. German American Ins. Co.*, 23 N. D. 139, L. R. A. (N. S.) 213, 134 N. W. 873.

Liability of insurance company in case of intentional destruction of property by insured. 17 L. R. A. (N. S.) 189.

ARTICLE 10—NOTICE OF LOSS.

§ 6541. WITHOUT UNNECESSARY DELAY.] In case of loss upon an insurance against fire an insurer is exonerated, if notice thereof is not given to him by some person insured, or entitled to the benefit of the insurance without unnecessary delay. (R. C. 1905, § 5974.)

Proof of loss in case of Lloyd's policies. 55 L. R. A. 200.

Delay in giving notice of claim under employer's indemnity policy. 47 L. R. A. (N. S.) 1214.

Condition in burglary insurance policy as to notice and proof of loss. 46 L. R. A. (N. S.) 571.

Waiver by requiring further proofs of loss. 9 Am. St. Rep. 236.

§ 6542. ONLY BEST PROOF IN POWER REQUIRED.] When preliminary proof of loss is required by a policy the insured is not bound to give such proof as would be necessary in a court of justice; but it is sufficient for him to give the best evidence which he has in his power at the time. (R. C. 1905, § 5975.)

Effect of false swearing in proofs of loss. 32 L. R. A. (N. S.) 453.

Conclusiveness of proofs of loss as against insured or beneficiary. 44 L. R. A. 846.

Furnishing proofs of loss not under oath as substantial compliance with policy requiring proofs under oath. 28 L. R. A. (N. S.) 651.

Duty of insured to submit to examination and furnish information. 52 L. R. A. 424.

§ 6543. DEFECTS IN, HOW WAIVED.] All defects in a notice of loss or in preliminary proof thereof which the insured might remedy and which the insurer omits to specify to him without unnecessary delay as grounds of objection are waived. (R. C. 1905, § 5976.)

Objection to proofs of loss come too late after suit brought. *Fosmark v. Equitable R. Asso.*, 23 S. D. 102, 120 N. W. 777.

Waiver of condition as to arbitration by accepting proof of loss. 15 L. R. A. (N. S.) 1073.

§ 6544. DELAY IN, HOW WAIVED.] Delay in the presentation to an insurer of notice or proof of loss is waived, if caused by any act of his, or if he omits to make objections promptly and specifically upon that ground. (R. C. 1905, § 5977.)

Evidence examined and held waiver. *Johnson v. D. F. & M. Co.*, 1 N. D.

167, 45 N. W. 799; *Purell v. St. P. F. & M. Co.*, 5 N. D. 100, 64 N. W. 943; *Peet v. D. F. & M. Co.*, 1 S. D. 462, 47 N. W. 532.

Failure to make objection to proof until after expiration of time prescribed for making, held waiver of time. *Angier v. Assurance Co.*, 10 S. D. 82, 71 N. W. 761.

Making proof of loss may be waived by company's adjuster. *Hitchcock v. Insurance Co.*, 10 S. D. 271, 72 N. W. 898.

§ 6545. TIME IN WHICH TO MAKE. BLANKS TO BE FURNISHED.] Upon notice of loss being given to the insurer on behalf of the insured or of a beneficiary under a policy of life insurance the insured shall within twenty days after receipt of such notice furnish to the insured or beneficiary, as the case may be, a blank form of proof of loss and the insured shall have sixty days after such blank form is furnished in which to make such proof of loss; in case of life insurance the beneficiary shall have ninety days after receipt of such blank form in which to make such proof of loss. If the insurer shall fail to furnish such blank form of proof of loss within the time aforesaid he shall be deemed to have waived such proof and any agreement made to waive the provisions of this section is void. (R. C. 1905, § 5978.)

§ 6546. FAILURE TO FURNISH CERTIFICATE OF ANOTHER.] If a policy requires by way of preliminary proof of loss the certificate or testimony of another person than the insured, it is sufficient for the insured to use reasonable diligence to procure it and in case of the refusal of such person to give it, then to furnish reasonable evidence to the insurer that such refusal was not induced by any just grounds of disbelief in the facts necessary to be certified. (R. C. 1905, § 5979.)

Effect of failure of mortgagor to give notice or proof of loss upon right of mortgagee to recover under the policy. 14 L. R. A. (N. S.) 459.

ARTICLE 11—DOUBLE INSURANCE.

§ 6547. DEFINED.] A double insurance exists when the same person is insured by several insurers separately in respect to the same subject and interest. (R. C. 1905, § 5980.)

Waiver of conditions against other insurance. 27 Am. Rep. 601.

§ 6548. CONTRIBUTION OF INSURERS.] In case of double insurance the several insurers are liable to pay losses thereon, as follows:

1. In fire insurance each insurer must contribute ratably towards the loss without regard to the dates of the several policies.

2. In marine insurance the liability of the several insurers for a total loss, whether actual or constructive, when the policies are not simultaneous is in the order of the dates of the several policies, no liability attaching to a second or other subsequent policy, except as to the excess of the loss over the amount of all previous policies on the same interest. If two or more policies bear date upon the same day they are deemed to be simultaneous and the liability of insurers on simultaneous policies is to contribute ratably with each other. The insolvency of any of the insurers does not affect the proportionate liability of the other insurers. The liability of all insurers on the same marine interest for a partial or average loss is to contribute ratably. (R. C. 1905, § 5981.)

Insurer is entitled to such interpretation of clause making policy void because of increase of hazard occasioned by insured as will include mort-

gage placed upon property by insured. *Lawyer v. Globe Mut. Ins. Co.*, 25 S. D. 549, 127 N. W. 615.

Liability of successive insurers. 28 Am. Dec. 121.

ARTICLE 12—REINSURANCE.

§ 6549. DEFINED.] A contract of reinsurance is one by which an insurer procures a third person to insure him against loss or liability by reason of such original insurance. (R. C. 1905, § 5982.)

Reinsurance and the remedies of the parties thereunder. 45 Am. St. Rep. 442.

Liability of reinsurer. 8 L. R. A. (N. S.) 845; 44 L. R. (N. S.) 317.

§ 6550. DISCLOSURES REQUIRED.] When an insurer obtains reinsurance he must communicate all the representations of the original insurer and also all the knowledge and information he possesses, whether previously or subsequently acquired, which is material to the risk. (R. C. 1905, § 5983.)

§ 6551. CONTRACT OF INDEMNITY.] A reinsurance is presumed to be a contract of indemnity against liability and not merely against damage. (R. C. 1905, § 5984.)

§ 6552. ORIGINAL INSURED NO INTEREST.] The original insured has no interest in a contract of reinsurance. (R. C. 1905, § 5985.)

CHAPTER 78.

MARINE INSURANCE.

ARTICLE 1. Definition of marine insurance, § 6553.

2. Insurable interest, §§ 6554-6560.

3. Concealment. §§ 6561-6564.

4. Representations, §§ 6565-6566.

5. Implied warranties, §§ 6567-6574.

6. The voyage and deviation, §§ 6575-6580.

7. Loss, §§ 6581-6591.

8. Abandonment, §§ 6592-6608.

9. Measure of indemnity, §§ 6609-6619.

ARTICLE 1—DEFINITION OF MARINE INSURANCE.

§ 6553. DEFINITION.] Marine insurance is an insurance against risks connected with navigation to which a ship, cargo, freightage, profits or other insurable interest in movable property may be exposed during a certain voyage or a fixed period of time. (R. C. 1905, § 5986.)

ARTICLE 2—INSURABLE INTEREST.

§ 6554. OWNER ALWAYS HAS.] The owner of a ship has in all cases an insurable interest in it, even when it has been chartered by one who covenants to pay him its value in case of loss. (R. C. 1905, § 5987.)

§ 6555. HYPOTHECATION REDUCES INTEREST.] The insurable interest of the owner of a ship hypothecated by bottomry is only the excess of its value over the amount secured by bottomry. (R. C. 1905, § 5988.)

§ 6556. FREIGHTAGE DEFINED AS TO INSURANCE.] Freightage in the sense of a policy of marine insurance signifies all the benefit derived by the owner,

either from the chartering of the ship or its employment for the carriage of his own goods or those of others. (R. C. 1905, § 5989.)

§ 6557. EXPECTED FREIGHTAGE.] The owner of a ship has an insurable interest in expected freightage which he would have certainly earned but for the intervention of a peril insured against. (R. C. 1905, § 5990.)

§ 6558. SAME.] The interest mentioned in the last section exists, in the case of a charter party, when the ship has broken ground on the chartered voyage; and if the price is to be paid for the carriage of goods, when they are actually on board or there is some contract for putting them on board and both ship and goods are ready for the specified voyage. (R. C. 1905, § 5991.)

§ 6559. WHEN PROFITS INSURABLE INTEREST.] One who has an interest in the thing from which profits are expected to proceed has an insurable interest in the profits. (R. C. 1905, § 5992.)

§ 6560. CHARTERER HAS.] The charterer of a ship has an insurable interest in it to the extent that he is liable to be damnified by its loss. (R. C. 1905, § 5993.)

ARTICLE 3—CONCEALMENT.

§ 6561. DISCLOSURES MORE EXTENSIVE.] In marine insurance each party is bound to communicate in addition to what is required by section 6482, all the information which he possesses material to the risk, except such as is mentioned in section 6483 and to state the exact and whole truth in relation to all matters that he represents or upon inquiry assumes to disclose. (R. C. 1905, § 5994.)

§ 6562. BELIEF OF ANOTHER MATERIAL.] In marine insurance information of the belief or expectation of a third person in reference to a material fact is material. (R. C. 1905, § 5995.)

§ 6563. WHEN KNOWLEDGE OF LOSS PRESUMED.] A person insured by a contract of marine insurance is presumed to have had knowledge at the time of insuring of a prior loss, if the information might possibly have reached him in the usual mode of transmission and at the usual rate of communication. (R. C. 1905, § 5996.)

§ 6564. WHAT DOES NOT VITIATE ENTIRE CONTRACT.] A concealment in marine insurance in respect to any of the following matters does not vitiate the entire contract, but merely exonerates the insurer from a loss resulting from the risk concealed:

1. The national character of the insured.
2. The liability of the thing insured to capture and detention.
3. The liability to seizure from breach of foreign laws of trade.
4. The want of necessary documents; and,
5. The use of false and simulated papers. (R. C. 1905, § 5997.)

ARTICLE 4—REPRESENTATIONS.

§ 6565. RESCISSION FOR FALSE.] If a representation by a person insured by contract of marine insurance is intentionally false in any respect, whether material or immaterial, the insurer may rescind the entire contract. (R. C. 1905, § 5998.)

§ 6566. WITHOUT FRAUD DOES NOT AVOID.] The eventual falsity of a representation as to expectation does not in the absence of fraud avoid a contract of insurance. (R. C. 1905, § 5999.)

ARTICLE 5—IMPLIED WARRANTIES.

§ 6567. SEAWORTHINESS.] In every marine insurance upon a ship or freight, or freightage, or upon anything which is the subject of marine insurance a warranty is implied that the ship is seaworthy. (R. C. 1905, § 6000.)

What embraced in warranty of seamanship. 1 Am. Dec. 165; 33 Am. Dec. 33.

§ 6568. SEAWORTHY DEFINED.] A ship is seaworthy when reasonably fit to perform the services and to encounter the ordinary perils of the voyage contemplated by the parties to the policy. (R. C. 1905, § 6001.)

§ 6569. WHEN FOREGOING WARRANTY COMPLIED WITH.] An implied warranty of seaworthiness is complied with if the ship is seaworthy at the time of the commencement of the risk, except in the following cases:

1. When the insurance is made for a specified length of time, the implied warranty is not complied with, unless the ship is seaworthy at the commencement of every voyage she may undertake during that time; and,

2. When the insurance is upon the cargo, which by the terms of the policy, or the description of the voyage or the established custom of the trade is to be transhipped at an intermediate port, the implied warranty is not complied with, unless each vessel upon which the cargo is shipped or transhipped is seaworthy at the commencement of its particular voyage. (R. C. 1905, § 6002.)

§ 6570. WHAT SEAWORTHINESS INCLUDES.] A warranty of seaworthiness extends not only to the structure of the ship itself, but requires that it be properly laden and provided with a competent master, a sufficient number of competent officers and seamen and the requisite appurtenances and equipments such as cables and anchors, food, fuel and lights and other necessary or proper stores and implements for the voyage. (R. C. 1905, § 6003.)

§ 6571. 'AS TO EACH PART OF THE VOYAGE.] When different portions of the voyage contemplated by a policy differ in respect to the things requisite to make the ship seaworthy therefor, a warranty of seaworthiness is complied with, if at the commencement of each portion the ship is seaworthy with reference to that portion. (R. C. 1905, § 6004.)

§ 6572. DELAY IN REPAIRING EXONERATES.] When a ship becomes unseaworthy during the voyage to which an insurance relates, an unreasonable delay in repairing the defect exonerates the insurer from liability from any loss arising therefrom. (R. C. 1905, § 6005.)

§ 6573. SEAWORTHY AS TO CARGO.] A ship which is seaworthy for the purpose of an insurance upon the ship may, nevertheless, by reason of being unfitted to receive the cargo be unseaworthy for the purpose of insurance upon the cargo. (R. C. 1905, § 6006.)

§ 6574. NEUTRAL PAPERS.] When the nationality or neutrality of a ship or cargo is expressly warranted it is implied that the ship will carry requisite documents to show such nationality or neutrality and that it will not carry any documents which cast reasonable suspicion thereon. (R. C. 1905, § 6007.)

ARTICLE 6—THE VOYAGE AND DEVIATION.

§ 6575. VOYAGE FIXED BY MERCANTILE USAGE.] When the voyage contemplated by a policy is described by the places of beginning and ending, the voyage insured is one which conforms to the course from point to point fixed by mercantile usage between those places. (R. C. 1905, § 6008.)

§ 6576. WHEN NOT SO FIXED.] If the course of sailing is not fixed by mercantile usage, the voyage insured by a policy is the way between the places specified, which to a master of ordinary skill and discretion would seem the most natural, direct and advantageous. (R. C. 1905, § 6009.)

§ 6577. DEVIATION DEFINED.] Deviation is a departure from the course of the voyage insured mentioned in the last two sections, or an unreasonable delay in pursuing the voyage; or the commencement of an entirely different voyage. (R. C. 1905, § 6010.)

Effect of deviation by necessity upon policy. 58 Am. Dec. 673.

What is an effect of deviation of vessel. 33 Am. Dec. 60.

§ 6578. WHEN PROPER.] A deviation is proper:

1. When caused by circumstances over which neither the master nor the owner of the ship has any control.

2. When necessary to comply with a warranty or to avoid a peril, whether insured against or not.

3. When made in good faith and upon reasonable grounds of belief in its necessity to avoid a peril; or,

4. When made in good faith for the purpose of saving human life or relieving another vessel in distress. (R. C. 1905, § 6011.)

§ 6579. IMPROPER.] Every deviation not specified in the last section is improper. (R. C. 1905, § 6012.)

§ 6580. INSURER NOT LIABLE AFTER.] An insurer is not liable for any loss happening to a thing insured subsequently to an improper deviation. (R. C. 1905, § 6013.)

ARTICLE 7—Loss.

§ 6581. CLASSIFIED.] A loss may be either total or partial. (R. C. 1905, § 6014.)

Liability of marine insurer for loss caused by explosion. 19 L. R. A. 594; 38 L. R. A. (N. S.) 474.

Effect of navigating in forbidden waters in case of loss within waters covered by policy. 10 L. R. A. (N. S.) 742.

§ 6582. PARTIAL.] Every loss which is not total is partial. (R. C. 1905, § 6015.)

§ 6583. TOTAL LOSS CLASSIFIED.] A total loss may be either actual or constructive. (R. C. 1905, § 6016.)

§ 6584. ACTUAL TOTAL.] An actual total loss is caused by:

1. Total destruction of the thing insured.

2. The loss of the thing by sinking or by being broken up.

3. Any damage to the thing which renders it valueless to the owner for the purposes for which he held it; or,

4. Any other event which entirely deprives the owner of the possession at the port of destination of the thing insured. (R. C. 1905, § 6017.)

§ 6585. CONSTRUCTIVE TOTAL.] A constructive total loss is one which gives to a person insured a right to abandon under section 6593. (R. C. 1905, § 6018.)

§ 6586. WHEN ACTUAL LOSS PRESUMED.] An actual loss may be presumed from the continued absence of a ship without being heard of; and the length

of time which is sufficient to raise this presumption depends on the circumstances of the case. (R. C. 1905, § 6019.)

§ 6587. DUTY TO PROCURE ANOTHER SHIP FOR CARGO.] When a ship is prevented at an intermediate port from completing the voyage by the perils insured against, the master must make every exertion to procure in the same or a contiguous port another ship for the purpose of conveying the cargo to its destination and the liability of a marine insurer thereon continues after they are thus reshipped. (R. C. 1905, § 6020.)

§ 6588. LIABLE FOR COST OF RESHIPMENT.] In addition to the liability mentioned in the last section a marine insurer is bound for damages, expenses of discharging, storage, reshipment, extra freightage and all other expenses incurred in saving the cargo reshipped pursuant to the last section up to the amount insured. (R. C. 1905, § 6021.)

Right to recover under "sue and labor" clause in policy of marine insurance, for moving cargo overland. 14 L. R. A. (N. S.) 1161.

§ 6589. PAYMENT WITHOUT NOTICE.] Upon an actual total loss a person insured is entitled to payment without notice of abandonment. (R. C. 1905, § 6022.)

§ 6590. GENERAL AVERAGE LOSS.] When it has been agreed that an insurance upon a particular thing or class of things shall be free from particular average a marine insurer is not liable for any particular average loss not depriving the insured of the possession at the port of destination of the whole of such thing or class of things, even though it becomes entirely worthless; but he is liable for his proportion of all general average loss assessed upon the thing insured. (R. C. 1905, § 6023.)

§ 6591. WHAT AGAINST ACTUAL TOTAL LOSS COVERS.] An insurance confined in terms to an actual loss does not cover a constructive total loss, but covers any loss which necessarily results in depriving the insured of the possession at the port of destination of the entire thing insured. (R. C. 1905, § 6024.)

ARTICLE 8—ABANDONMENT.

§ 6592. DEFINED.] Abandonment is the act by which after a constructive total loss a person insured by a contract of marine insurance declares to the insurer that he relinquishes to him his interest in the thing insured. (R. C. 1905, § 6025.)

§ 6593. WHEN AUTHORIZED.] A person insured by a contract of marine insurance may abandon the thing insured, or any particular portion thereof, separately valued by the policy, or otherwise separately insured and recover for a total loss thereof when the cause of the loss is a peril insured against:

1. If more than half thereof in value is actually lost or would have to be expended to recover it from the peril.

2. If it is injured to such an extent as to reduce its value more than one-half.

3. If the thing insured, being a ship, the contemplated voyage cannot be lawfully performed without incurring an expense to the insured of more than half the value of the thing abandoned, or without incurring a risk which a prudent man would not take under the circumstances; or,

4. If, the thing insured being cargo and freightage, the voyage cannot be performed nor another ship procured by the master within a reasonable time

and with reasonable diligence to forward the cargo without incurring the like expenses or risk. But freightage cannot in any case be abandoned unless the ship is also abandoned. (R. C. 1905, § 6026.)

§ 6594. MUST BE ABSOLUTE.] An abandonment must be neither partial nor conditional. (R. C. 1905, § 6027.)

§ 6595. WHEN MADE.] An abandonment must be made within a reasonable time after information of the loss and after the commencement of the voyage and before the party abandoning has information of its completion. (R. C. 1905, § 6028.)

§ 6596. WHEN BECOMES INEFFECTUAL.] When the information upon which an abandonment has been made proves incorrect or the thing insured was so far restored when the abandonment was made that there was then in fact no total loss, the abandonment becomes ineffectual. (R. C. 1905, § 6029.)

§ 6597. MADE BY WRITTEN NOTICE.] Abandonment is made by giving notice thereof to the insurer which may be done orally or in writing. (R. C. 1905, § 6030.)

§ 6598. REQUISITES OF NOTICE.] A notice of abandonment must be explicit and must specify the particular cause of the abandonment; but need state only enough to show that there is probable cause therefor and need not be accompanied with proof of interest or of loss. (R. C. 1905, § 6031.)

§ 6599. SUSTAINED ONLY ON CAUSE SPECIFIED.] An abandonment can be sustained only upon the cause specified in the notice thereof. (R. C. 1905, § 6032.)

§ 6600. EQUIVALENT TO TRANSFER.] An abandonment is equivalent to a transfer by the insured of his interest to the insurer with all the chances of recovery and indemnity. (R. C. 1905, § 6033.)

§ 6601. PAYMENT ENTITLES INSURER TO SALVAGE.] If a marine insurer pays for a loss as if it was an actual total loss, he is entitled to whatever may remain of the thing insured or its proceeds or salvage as if there had been a formal abandonment. (R. C. 1905, § 6034.)

§ 6602. INSURED'S AGENTS BECOME INSURER'S ON ABANDONMENT.] Upon an abandonment acts done in good faith by those who were agents of the insured in respect to the thing insured subsequent to the loss are at the risk of the insurer and for his benefit. (R. C. 1905, § 6035.)

§ 6603. ACCEPTANCE OF UNNECESSARY.] An acceptance of an abandonment is not necessary to the rights of the insured and is not to be presumed from the mere silence of the insurer upon his receiving notice of abandonment. (R. C. 1905, § 6036.)

§ 6604. ACCEPTANCE CONCLUSIVE.] The acceptance of an abandonment, whether express or implied, is conclusive upon the parties and admits the loss and sufficiency of the abandonment. (R. C. 1905, § 6037.)

§ 6605. ACCEPTED IS IRREVOCABLE.] An abandonment once made and accepted is irrevocable, unless the ground upon which it was made proves to be unfounded. (R. C. 1905, § 6038.)

§ 6606. TO WHOM FREIGHTAGE BELONGS AFTER.] On an accepted abandonment of a ship freightage earned previous to the loss belongs to the insurer thereof; but freightage subsequently earned belongs to the insurer of the ship. (R. C. 1905, § 6039.)

§ 6607. REFUSAL TO ACCEPT.] If an insurer refuses to accept a valid abandonment, he is liable as upon an actual total loss, deducting from the amount any proceeds of the thing insured which may have come to the hands of the insured. (R. C. 1905, § 6040.)

§ 6608. RIGHTS, IF ABANDONMENT OMITTED.] If a person insured omits to abandon he may, nevertheless, recover his actual loss. (R. C. 1905, § 6041.)

ARTICLE 9—MEASURE OF INDEMNITY.

§ 6609. VALUATION CONCLUSIVE BETWEEN PARTIES.] A valuation in a policy of marine insurance is conclusive between the parties thereto in the adjustment of either a partial or total loss, if the insured has some interest at risk and there is no fraud on his part; except that when a thing has been hypothecated by bottomry or respondentia before its insurance and without the knowledge of the person actually procuring the insurance, he may show the real value. But a valuation fraudulent in fact entitles the insurer to rescind the contract. (R. C. 1905, § 6042.)

§ 6610. PARTIAL LOSS. LIABILITY.] A marine insurer is liable upon a partial loss only for such proportion of the amount insured by him as the loss bears to the value of the whole interest of the insured in the property insured. (R. C. 1905, § 6043.)

§ 6611. RECOVERY OF PROFITS, HOW ESTIMATED.] When profits are separately insured in a contract of marine insurance, the insured is entitled to recover in case of loss a proportion of such profits equivalent to the proportion which the value of the property lost bears to the value of the whole. (R. C. 1905, § 6044.)

§ 6612. HOW LOSS DETERMINED ON VALUED POLICY.] In case of a valued policy of marine insurance on freightage or cargo, if a part only of the subject is exposed to risk the valuation applies only in proportion to such part. (R. C. 1905, § 6045.)

§ 6613. WHEN LOSS OF PROFITS PRESUMED.] When profits are valued and insured by a contract of marine insurance, a loss of them is conclusively presumed from a loss of the property out of which they were expected to arise and the valuation fixes their amount. (R. C. 1905, § 6046.)

§ 6614. HOW LOSS ON OPEN POLICY ESTIMATED.] In estimating a loss under an open policy of marine insurance the following rules are to be observed:

1. The value of a ship is its value at the beginning of the risk including all articles or charges which add to its permanent value or which are necessary to prepare it for the voyage insured.

2. The value of the cargo is its actual cost to the insured, when laden on board or when that cost cannot be ascertained, its market value at the time and place of lading, adding the charges incurred in purchasing and placing it on board, but without reference to any losses incurred in raising money for its purchase, or to any drawback on its exportation, or to the fluctuations of the market at the port of destination, or to expenses incurred on the way or on arrival.

3. The value of freightage is the gross freightage, exclusive of primage, without reference to the cost of earning it; and,

4. The cost of insurance is in each case to be added to the value thus estimated. (R. C. 1905, § 6047.)

§ 6615. HOW PARTIAL LOSS OF CARGO ESTIMATED.] If a cargo insured against partial loss arrives at the port of destination in a damaged condition, the loss of the insured is deemed to be the same proportion of the value, which the market price at that port of the thing so damaged bears to the market price it would have brought if sound. (R. C. 1905, § 6048.)

§ 6616. LIABILITY FOR REPAIRS AND LABOR TO RECOVER.] A marine insurer is liable for all the expenses attendant upon a loss which forces a ship into port to be repaired; and when it is agreed that the insured may labor for the recovery of the property the insurer is liable for the expense incurred thereby; such expense in either case being in addition to the total loss, if that afterward occurs. (R. C. 1905, § 6049.)

§ 6617. LIABILITY FOR INSURED'S CONTRIBUTION TO GENERAL AVERAGE.] A marine insurer is liable for a loss falling upon the insured through a contribution in respect to the thing insured, required to be made by him towards a general average loss called for by a peril insured against. (R. C. 1905, § 6050.)

§ 6618. SUBROGATION OF RIGHT TO CONTRIBUTION.] When a person insured by a contract of marine insurance has a demand against others for contribution he may claim the whole loss from the insurer, subrogating him to his own right to contribution. But no such claim can be made upon the insurer after the separation of the interests liable to contribution, nor when the insured, having the right and opportunity to enforce contribution from others, has neglected or waived the exercise of that right. (R. C. 1905, § 6051.)

§ 6619. LIABILITY FOR PARTIAL LOSS OF SHIP.] In the case of a partial loss of a ship or its equipment the old materials are to be applied toward payment for the new and whether the ship is new or old a marine insurer is liable for only two-thirds of the remaining cost of the repairs, except that he must pay for anchors and cannon in full and for sheathing metal at a depreciation of only two and one-half per cent. for each month that it has been fastened to the ship. (R. C. 1905, § 6052.)

CHAPTER 79.

FIRE INSURANCE.

§ 6620. RESCISSION FOR ALTERATION IN USE INCREASING RISK.] An alteration in the use or condition of a thing insured from that to which it is limited by the policy, made without the consent of the insurer by means within the control of the insured and increasing the risk entitles an insurer to rescind a contract of fire insurance. (R. C. 1905, § 6053.)

A policy limiting the use of buildings insured to certain purposes is void if building is used without knowledge of insured for purposes increasing hazard. *School District v. Insurance Co.*, 7 S. D. 458, 64 N. W. 527.

Indications that building may be intentionally set on fire as an increase of insurance risk. 31 L. R. A. (N. S.) 603.

Necessity of proof of increase of risk to avoid insurance policy because of the vacancy of insured property. 12 L. R. A. (N. S.) 456.

§ 6621. NOT IF RISK NOT INCREASED.] An alteration in the use or con-

dition of a thing insured from that to which it is limited by the policy, which does not increase the risk, does not affect a contract of fire insurance. (R. C. 1905, § 6054.)

As to similar provision in Cal. Civ. Code, § 2754. See *Slinkard v. Manchester Fire Assur. Co.*, 122 Cal. 595, 55 Pac. 417.

§ 6622. WHEN CONTRACT UNAFFECTED, THOUGH RISK INCREASED.] A contract of fire insurance is not affected by any act of the insured subsequent to the execution of the policy, which does not violate its provisions, even though it increases the risk and is the cause of a loss. (R. C. 1905, § 6055.)

§ 6623. MEASURE OF INDEMNITY.] If there is no valuation in the policy, the measure of indemnity in an insurance against fire is the full amount stated in the policy; but the effect of a valuation in a policy of fire insurance is the same as in a policy of marine insurance. (R. C. 1905, § 6056.)

§ 6624. FACE OF POLICY TO BE PAID IN CASE OF LOSS.] Whenever any policy of insurance shall be written to insure any real property in this state against loss by fire and that property insured shall be destroyed without fraud on the part of the insured or his assigns, the stated amount of the insurance written in such policy shall be taken conclusively to be the true value of the property insured. (1907, Ch. 158.)

§ 6625. STANDARD POLICY.] No fire insurance company, corporation or association, their officers or agents, shall make, issue, use or deliver for use any fire insurance policy or renewal of any fire policy on property in this state other than such as shall conform in all particulars as to blanks, size of type, context, provisions, agreements and conditions with the printed form of contract or policy heretofore filed in the office of the commissioner of insurance as a standard policy for this state and no other or different provisions, agreement, condition or clause shall in any manner be made a part of such contract or policy or be indorsed thereon or delivered therewith, except as follows, to-wit:

1. The name of the company, its location and place of business, the date of its incorporation or organization, and the state or county under which the same is organized, the amount of paid up capital stock, whether it is a stock or mutual company, the names of its officers, the number and date of the policy; and if it is issued through a manager or agent of the company, the words, "this policy shall not be valid until countersigned by the duly authorized manager or agent of the company, at....." may be printed on policies issued on property in this state.

2. Printed or written forms of description and specifications or schedules of the property covered by any particular policy and any other matter necessary to express clearly all the facts and conditions of insurance on any particular risk, which facts or conditions shall in no case be inconsistent with or a waiver of any of the provisions or conditions of the standard policy herein provided for may be written upon or attached or appended to any policy issued on property in this state.

3. A company, corporation or association organized or incorporated under and in pursuance of the laws of this state, or elsewhere, if entitled to do business in this state, may with the approval of the commissioner of insurance, if the same is not already included in the standard form as filed in the office of

the commissioner of insurance, print on its policies any provision which it is required by law to insert therein, if such provision is not in conflict with the laws of this state or the United States, or of the provisions of the standard form provided for herein, but said provision shall be printed apart from the other provisions, agreements or conditions of the policy and in type not smaller than the body of the policy and under a separate title, as follows: "Provisions required by law to be stated in this policy" and be a part of said policy.

4. There may be indorsed on the outside of any policy herein provided for the name, with the word, "agent or agents" and place of business, of any insurance agent or agents, either by writing, printing, stamping or otherwise.

5. When two or more companies, each having previously complied with the laws of this state, unite to issue a joint policy, there may be expressed in the heading of such policy the fact of the severalty of the contract; also the proportion of premiums to be paid to each company and the proportion of liability which each company agrees to assume. And in the printed conditions of such policy the necessary change may be made from the singular to the plural number, when reference is had to the companies issuing such policies. (R. C. 1905, § 6057.)

Insurance commissioner cannot compel use of standard policy prepared by himself. *Phenix Ins. Co. v. Perkins*, 19 S. D. 59, 101 N. W. 1110.

§ 6626. CONSTRUCTION OF STANDARD POLICY.] Policies of insurance in the form prescribed by the last section shall be in all respects subject to the same rules of construction as to their effect or the waiver of any of their provisions as if the form thereof had not been prescribed. (R. C. 1905, § 6058.)

Policy of insurance cannot be avoided after loss where premium was received with full knowledge of factor. *Leisen v. St. Paul F. & M. Ins. Co.*, 20 N. D. 316, 30 L. R. A. (N. S.) 539, 127 N. W. 837.

CHAPTER 80.

LIFE AND HEALTH INSURANCE.

§ 6627. WHEN PAYABLE.] An insurance upon life may be made payable on the death of the person or on his surviving a specified period, or periodically so long as he shall live, or otherwise contingently on the continuance or termination of life. (R. C. 1905, § 6059.)

§ 6628. IN WHOM PERSON HAS INSURABLE INTEREST.] Every person has an insurable interest in the life and health:

1. Of himself.

2. Of any person on whom he depends wholly or in part for education or support.

3. Of any person under a legal obligation to him for the payment of money, or respecting property or services, of which death or illness might delay or prevent the performance; and,

4. Of any person upon whose life any estate or interest vested in him depends. (R. C. 1905, § 6060.)

Conflict of laws as to insurable interest. 63 L. R. A. 856; 23 L. R. A. (N. S.) 976.

Insurable in the life of another, and necessity of. 57 Am. Dec. 93; 46 Am. Rep. 189; 52 Am. Rep. 135; 58 Am. Rep. 852.

§ 6629. POLICY TRANSFERABLE.] A policy of insurance upon life or health may pass by transfer, will or succession to any person, whether he has an insurable interest or not, and such person may recover upon it whatever the insured might have recovered. (R. C. 1905, § 6061.)

Policy made payable to insured or his personal representative may be willed, but it is subject to statutory allowance of surviving husband or wife and minor children. *Meyer v. Meyer*, 25 S. D. 596, 127 N. W. 595.

Assignment of life insurance policy. 87 Am. St. Rep. 484.

Validity of assignment of life insurance policy to one having no insurable interest. 27 Am. St. Rep. 327; 16 Am. St. Rep. 906.

§ 6630. WHEN NOTICE OF TRANSFER UNNECESSARY.] Notice to an insurer of a transfer or bequest therefor is not necessary to preserve the validity of a policy of insurance upon life or health, unless thereby expressly required. (R. C. 1905, § 6062.)

§ 6631. MEASURE OF INDEMNITY.] Unless the interest of a person insured is susceptible of exact pecuniary measurement, the measure of indemnity under a policy of insurance upon life or health is the sum fixed in the policy. (R. C. 1905, § 6063.)

§ 6632. AGENT DEFINED.] Any person who shall solicit an application for insurance upon the life of another shall, in any controversy between the assured or his beneficiary and the company issuing any policy upon such application be regarded as the agent of the company and not the agent of the assured. (1907, Ch. 146.)

§ 6633. SUICIDE NO DEFENSE AFTER ONE YEAR.] In all suits on policies of insurance on life issued by any regular or assessment or fraternal beneficiary association, company, or corporation, doing business in this state, it shall be no defense after the policy has been in force one year, that the insured committed suicide, and any provision or stipulation in the policy to the contrary shall be void. (1911, Ch. 157; R. C. 1905, § 6064.)

Defence that insured committed suicide cannot be set up, when suicide occurs after expiration of one year from date of policy. *Harrington v. Mutual L. Ins. Co.*, 21 N. D. 447, 34 L. R. A. (N. S.) 373, 131 N. W. 246.

Power of legislature to forbid defence of suicide in life insurance. 31 L. R. A. 831.

Conflict of laws as to suicide provision in insurance contract. 63 L. R. A. 867; 23 L. R. A. (N. S.) 981.

CHAPTER 81.

STANDARD FORMS OF INSURANCE POLICIES; PROVISIONS IN LIFE INSURANCE POLICIES.

§ 6634. AUTHORITY REQUIRED TO ISSUE POLICIES.] No policy of life insurance shall be issued or delivered in this state and no policy of life insurance

of a life insurance company organized under the laws of this state shall be issued unless authorized by the provisions of this act. (1907, Ch. 140, § 1.)

§ 6635. STANDARD FORMS.] The following are established as standard forms in which policies of life insurance may be issued and delivered in this state, and in which policies of life insurance companies organized under the laws of this state may be issued:

NORTH DAKOTA STANDARD LIFE INSURANCE POLICY.

(Insert "Ordinary" or "Limited Payment.")

.....Life
Age.....
Amount..... Premium \$.....
.....
.....
.....

Of North Dakota

In consideration of.....Dollars,
receipt of which is hereby acknowledged, and the payment of (insert amounts
and times of payments of premiums) until (insert "the death of the insured"
in ordinary life and ".....full year's premiums shall have been paid or
until the prior death of the insured" in limited payment life.)

Promises to pay upon receipt at the home office of the.....
company in.....of due proof of death of.....
of.....County of....., State of North Dakota,
herein called the insured, to.....beneficiary.....
with (insert "out" if so desired) right of revocation.....
dollars, less any indebtedness hereon to the company and any unpaid portion
of the premium for the then current policy year.

CHANGE OF BENEFICIARY.] When the right of revocation has been reserved,
or in case of death of any beneficiary under either a revocable or irrevocable
designation the insured subject to any existing assignment of the policy, may
designate a new beneficiary with or without reserving right of revocation by
filing written notice thereof at the home office of the company, accompanied by
the policy for a suitable endorsement thereon. If any beneficiary shall die
before the insured and the insured shall not have designated a new beneficiary
the interest of such beneficiary shall be payable to the insured, (insert "his"
or "her") executors, administrators or assigns.

PAYMENT OF PREMIUMS.] The company will accept payment of premiums
at other times than as above stated, as follows:

.....
.....

Except as herein provided the payment of the premium or installment
thereof shall not maintain the policy in force beyond the date when the next
premium or installment thereof is payable.

All premiums are payable in advance at said home office, or to an agent
of the company upon delivery of the receipt signed by one or more of the
following officers of the company (insert titles of officers who may sign receipts)
and countersigned by the said agent.

A grace of one month subject to any interest charge at the rate of..... per centum per annum shall be granted for the payment of every premium after the first, during which month the insurance shall continue in force. If the insured shall die during the month of grace the overdue premiums will be deducted from any amount payable hereon in any settlement hereunder.

CONDITIONS.] (The policy may here provide for restrictions of liability by reason of travel, occupation, change of residence, and suicide. These restrictions such as refer to military and naval services in time of war, must be applicable only to cases where the act of the insured provided against occurs within two years after the issuance of the policy.)

INCONTESTABILITY.] The policy constitutes the entire contract between the parties and shall be incontestable from its date except for non-payments of premiums and except as otherwise provided in this policy. All statements made by the insured shall in the absence of fraud be deemed representations and not warranties, and no such statement shall void this policy unless it is contained in written application and a copy of such application shall be endorsed upon or attached to this policy when issued. If the age of the insured has been understated the amount payable hereunder shall be such as the premium paid would have purchased at the correct age.

PARTICIPATION.] This policy shall participate in the surplus of the company and beginning not later than the end of the (insert first, second or third) policy year the company will annually determine and account for the portion of the divisible surplus accruing hereon.

DIVIDENDS.] Dividends at the option of the owner of this policy shall on the.....day of.....of each year (here may be inserted "after the first policy year" or "after the second policy year") be either:

1. Paid in cash, or,
2. Applied toward payment of any premium or premiums, or,
3. Applied to the purchase of paid-up additions to the policy, or,
4. Left to accumulate to the credit of the policy with interest at (here insert a rate not exceeding that used by the company for calculating its reserves) per centum per annum and payable at the maturity of the policy, but withdrawable at the anniversary of the policy.

Unless the owner of the policy shall elect otherwise within three months after the mailing by the company of a written notice requiring such election the dividends shall be paid in cash.

LOANS.] After three full years' premiums have been paid, the company at any time, while this policy is in force, will advance, on proper assignment of this policy, and on the sole security thereof at a rate of interest not greater than.....per centum per annum, which interest if not paid annually shall be added to the principal and bear the same rate of interest, a sum equal to, or, at the option of the owner of the policy, less than the reserve at the end of the current policy year on this policy and on any dividend additions thereto, computed according to the (designate mortality table adopted by the company for computing reserve) mortality table and interest at the rate of (designate rate of interest adopted by the company for computing reserves) per centum per annum, less (here may be inserted not more than two and one-half)

per centum of the amount insured by this policy and of the dividend additions thereto

The company, however, will deduct from such loan value any existing indebtedness to the company on the policy and any unpaid balance of the premium for the current policy year, and may collect interest in advance on the loan to the end of the current policy year. Such loan may be deferred by the company for not exceeding six months after the application therefor is made. Failure to repay any such advance or to pay interest shall not void this policy unless the total indebtedness hereon to the company shall be equal or exceed such loan value at the time of such failure and until one month after notice shall have been mailed by the company to the last known address of the insured and of the assignee, if any. No condition other than as herein provided shall be exacted as a prerequisite to any such advance.

ASSIGNMENT.] No assignment of this policy shall be binding upon the company until it be filed with the company at its said home office. The company assumes no responsibility as to validity of any assignment.

OPTION OF SURRENDER OR LAPSE.] After this policy shall have been in force three years the owner, within one month after any default may elect (a) to accept the value of this policy in cash, or, (b) to have the insurance continued in force from date of default, without future participation and without the right to loan, for its face amount, including any outstanding dividend additions, less any indebtedness to the company thereon, or, (c) to purchase non-participating paid-up insurance payable at the same time and on the same conditions as this policy.

The cash value will be the reserve at the date of default on this policy, and on any dividend additions thereto, computed according to the (designate mortality table adopted by the company for computing reserves) mortality table and interest at the rate of (designate rate of interest adopted by the company for computing reserves) per centum per annum, less (here may be inserted not more than two and one-half) per centum of the amount insured by this policy and of any dividend additions thereto, and less any existing indebtedness to the company on this policy. Payment of such cash value may be deferred by the company for not exceeding six months after the application therefor is made. The term for which the insurance will be continued or the amount of the paid-up policy will be such as the cash value will purchase as a net single premium at the attained age of insured according to the (designate the mortality table adopted by the company for computing reserves) mortality table and interest at the rate of (designate rate of interest adopted by the company for computing reserves) per centum per annum. If the owner shall not, within one month from default, surrender this policy to the company at its home office for a cash surrender value or for paid-up insurance as provided in options (a) and (c) the insurance will be continued as provided in option (b).

The figures in the following table are computed in accordance with the above provisions and upon the assumption that there is no indebtedness on the policy, and that there are no outstanding dividend additions.

(At the option of the company the following may be here inserted: "The figures apply to a policy for \$1,000. As this contract is for \$. the loan, cash, or paid insurance available in any year will be \$. , the amount stated in the table for that year:")

	At End of Year	Cash or Loan Value	Paid-up Life Insurance	Continued Insurance		
				Years	Months	Days
3.	\$.....	\$.....	\$.....			
4.	\$.....	\$.....	\$.....			
5.	\$.....	\$.....	\$.....			
6.	\$.....	\$.....	\$.....			
7.	\$.....	\$.....	\$.....			
8.	\$.....	\$.....	\$.....			
9.	\$.....	\$.....	\$.....			
10.	\$.....	\$.....	\$.....			
11.	\$.....	\$.....	\$.....			
12.	\$.....	\$.....	\$.....			
13.	\$.....	\$.....	\$.....			
14.	\$.....	\$.....	\$.....			
15.	\$.....	\$.....	\$.....			
16.	\$.....	\$.....	\$.....			
17.	\$.....	\$.....	\$.....			
18.	\$.....	\$.....	\$.....			
19.	\$.....	\$.....	\$.....			
20.	\$.....	\$.....	\$.....			

(Figures for later years will be furnished upon request.)

REINSTATEMENT.] In case of continued temporary insurance under the above provisions this policy upon evidence of insurability satisfactory to the company may be reinstated within the first three years of the term for which the insurance is continued by payment of arrears of premiums with interest at (here insert not more than six) per centum per annum.

OPTIONS AT MATURITY.] The insured, by written notice to the company at its home office, and with the written consent of the assignee and irrevocable beneficiary, if any, may elect to have the net sum payable under this policy paid either in cash or as follows:

1. By the payment of interest thereon at per centum per annum payable annually, to the payee under this policy at the end of each year during the life of the payee and by the payment upon the death of the payee of the said net sum and accrued interest to the executors, administrators or assigns of the payee, unless otherwise directed in said notice.

2. By the payment of equal annual installments for a specified number of years, the first installment being payable immediately, in accordance with the following table for each \$1,000 of said net sum.

3. By the payment of equal annual installments payable at the beginning of each year for a fixed period of twenty years and for so many years longer as the payee shall survive in accordance with the following table for each \$1,000 of said net sum.

Installments payable under options two or three which shall not have been paid prior to the death of the payee shall be paid, unless otherwise directed in said notice, to the executors, administrators or assigns of the payee.

If the insured shall not have directed otherwise, the beneficiary may, after the death of the insured, by like written notice, and with the written consent of the assignee, if any, select either of the above options.

Unless otherwise specified by the insured the payee may on any interest

.....if the insured be then living, or upon receipt at said home office of due record [proof] of the prior death of the insured, to.....beneficiary..., with (insert "out" if so desired) right of revocation,.....dollars, less any indebtedness hereon to the company and any unpaid portion of the premium for the then current policy year.

CHANGE OF BENEFICIARY.] When the right of revocation has been reserved or in case of the death of any beneficiary under either a revocable or irrevocable designation, the insured, subject to any existing assignment of the policy, may designate a new beneficiary with or without reserving right of revocation by filing written notice thereof at the home office of the company accompanied by the policy for suitable endorsement thereon. If any beneficiary shall die before the insured, and the insured shall not have designated a new beneficiary, the interest of such beneficiary shall be payable to the insured (insert "his" or "her") executors, administrators or assigns.

PAYMENTS OF PREMIUMS.] The company will accept payments of premiums at other times than as stated above, as follows:

.....
.....
Except as herein provided the payment of a premium or installment thereof shall maintain the policy in force beyond the date when the next premium or installment thereof is payable.

All premiums are payable in advance at the said home office or to any agent of the company upon delivery of a receipt signed by one or more of the following officers of the company (insert titles of officers who may sign receipts), and countersigned by said agent.

A grace of one month subject to an interest charge at the rate of per centum per annum, shall be granted for the payment of every premium after the first, during which month the insurance shall continue in force. If the insured shall die during the month of grace the overdue premium will be deducted from any amount payable hereon in any settlement hereunder.

CONDITIONS.] (The policy may here provide for restriction of liability by reason of travel, occupation, change of residence, and suicide. These restrictions, except such as refer to military and naval service in time of war, must be applicable only to cases where the act of the insured provided against occurs within two years after the issuance of the policy.)

INCONTESTABILITY.] This policy constitutes the entire contract between the parties and shall be incontestable from its date, except for non-payment of premiums and except as otherwise provided in this policy. All statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties, and no such statement shall void this policy unless it is contained in a written application and a copy of such application shall be indorsed upon or attached to this policy when issued. If the age of the insured has been understated, the amount payable hereunder shall be such as the premium paid would have purchased at the correct age.

PARTICIPATION.] This policy shall participate in the surplus of the company and beginning not later than the end of the (insert first, second or third) policy year the company will annually determine and account for the portion of the divisible surplus accruing hereon.

DIVIDENDS.] Dividends at the option of the owner of this policy shall on

the.....day of.....of each year (here may be inserted "after the first policy year" or "after the second policy year") be either:

1. Paid in cash, or,
2. Applied toward the payment of any premium or premiums, or,
3. Applied to the purchase of paid-up additions to the policy, or,
4. Left to accumulate to the credit of the policy with the interest at (here insert a rate not exceeding that used by the company in calculating its reserves) per centum per annum and payable at the maturity of the policy, but withdrawable on any anniversary of the policy.

Unless the owner of this policy shall elect otherwise within three months after the mailing by the company of a written notice requiring such election, the dividends shall be paid in cash.

LOANS.] After three full years' premiums have been paid the company at any time while this policy is in force, will advance, on proper assignment of the policy and on the sole security thereof, at a rate of interest not greater than per centum per annum, which interest if not paid annually shall be added to the principal and bear the same rate of interest, a sum equal to, or, at the option of the owner of the policy, less than, the reserve at the end of the current policy year, on this policy and on any dividend additions thereto, computed according to the (designate mortality table adopted by the company for computing reserves) mortality table, and interest at the rate of (designate rate of interest adopted by the company for computing reserves) per centum per annum, less (here may be inserted not more than two and one-half) per centum of the amount insured by this policy and of any dividend additions thereto. The company, however, will deduct from such loan value any existing indebtedness to the company on this policy, and any unpaid balance of the premium for the current policy year, and may collect interest in advance on the loan to the end of the current policy year. Such loan may be deferred by the company for not exceeding six months after the application therefor is made. Failure to repay any such advance or to pay the interest shall not void this policy unless the total indebtedness hereon to the company shall equal or exceed such loan value at the time of such failure and until one month after notice shall have been mailed by the company to the last known address of the insured and of the assignee, if any.

No conditions other than as herein provided shall be exacted as a prerequisite to any such advance.

ASSIGNMENT.] No assignment of this policy shall be binding upon the company until it be filed with the company at its said home office. The company assumes no responsibility as to the validity of any assignment.

OPTIONS ON SURRENDER OR LAPSE.] After this policy shall have been in force three full years the owner, within one month after any default, may elect (a) to accept the value of this policy in cash, or, (b) to have the insurance continue in force from date of default without future participation and without the right to loans, for its face amount, including any outstanding dividend additions, less any indebtedness to the company hereon, or, (c) to purchase non-participating paid-up insurance payable at the same times and on the same conditions as this policy. The cash value will be the reserve at the date of default on this policy and on any dividend additions thereto computed according to the (designate mortality table adopted by the company for computing

reserves) mortality table and interest at the rate of (designate rate of interest adopted by the company for computing reserves) per centum per annum less (here may be inserted not more than two and one-half) per centum of the amount insured by this policy and of any dividend additions thereto, and less any existing indebtedness to the company on this policy. Payment of such cash value may be deferred by the company for not exceeding six months after the application therefor is made.

The term for which the insurance will be continued or the amount of the paid-up policy will be such as the cash value will purchase as a net single premium at the attained age of the insured, according to the (designate the mortality table adopted by the company for computing reserves) mortality table and interest at the rate of (designate rate of interest adopted by the company for computing reserves) per centum per annum. If the sum applicable to the purchase of temporary insurance shall be more than sufficient to continue the insurance to the end of the endowment term named in this policy the excess shall be used to purchase in the same manner non-participating paid-up pure endowment, payable at the end of the endowment term and on the same conditions. If the owner shall not, within one month from default surrender this policy to the company at the home office for a cash surrender value or for paid-up insurance as provided in options (a) and (c) the insurance will be continued as provided in option (b).

The figures in the following table are computed in accordance with the above provisions and upon the assumption that there is no indebtedness on the policy, and that there are no outstanding dividend additions.

(At the option of the company the following may be here inserted: "The figures apply to a policy of \$1,000. As this contract is for \$....., the loan, cash, paid-up insurance on pure endowment available in any year will be.....the amount stated in the table for this year.")

	At End of Year	Cash or Loan Value	Paid-up Endowment Insurance	Years	Continued Insurance Months	Days	Pure Endow- ment
3.	\$.....	\$.....	\$.....				\$.....
4.	\$.....	\$.....	\$.....				\$.....
5.	\$.....	\$.....	\$.....				\$.....
6.	\$.....	\$.....	\$.....				\$.....
7.	\$.....	\$.....	\$.....				\$.....
8.	\$.....	\$.....	\$.....				\$.....
9.	\$.....	\$.....	\$.....				\$.....
10.	\$.....	\$.....	\$.....				\$.....
11.	\$.....	\$.....	\$.....				\$.....
12.	\$.....	\$.....	\$.....				\$.....
13.	\$.....	\$.....	\$.....				\$.....
14.	\$.....	\$.....	\$.....				\$.....
15.	\$.....	\$.....	\$.....				\$.....
16.	\$.....	\$.....	\$.....				\$.....
17.	\$.....	\$.....	\$.....				\$.....
18.	\$.....	\$.....	\$.....				\$.....
19.	\$.....	\$.....	\$.....				\$.....
20.	\$.....	\$.....	\$.....				\$.....

(Figures for later years will be furnished upon request.)

designate a new beneficiary with or without reserving right of revocation, by filing written notice thereof at the home office of the company, accompanied by the policy for suitable indorsement thereon. If any beneficiary shall die before the insured and the insured shall not have designated a new beneficiary, the interests of such beneficiary shall be payable to the insured, (insert "his" or "her") executors, administrators or assigns. If a new beneficiary shall be designated only twenty annual installments will be payable under this policy, and future (if necessary, insert "semi" or "quarterly") annual premiums will be reduced to.....dollars each.

PAYMENT OF PREMIUMS.] The company will accept payment of premiums at other times than as stated above, as follows:

.....

 Upon return of this policy to the company accompanied by evidence satisfactory to the company of the death of the beneficiary the company will reduce the future (here insert "annual," "semi-annual" or "quarterly") premium to \$.....each.

Except as herein provided the payment of a premium or installment thereof shall not maintain the policy in force beyond the date when the next premium or installment thereof is payable.

All premiums are payable in advance at said home office, or to an agent of the company upon delivery of a receipt signed by one or more of the following officers of the company (insert titles of officers who may sign receipts) and countersigned by said agent.

A grace of one month subject to an interest charge at the rate of..... per centum per annum shall be granted for the payment of every premium after the first, during which month the insurance shall continue in force. If the insured shall die during the month of grace the overdue premium will be deducted from any amount payable hereon in any settlement hereunder.

CONDITIONS.] (The policy may here provide for restriction of liability by reason of travel, occupation, change of residence, and suicide. The restrictions, except such as refer to military and naval service in time of war, must be applicable only to cases where the act of the insured provided against occurs within two years after the issuance of the policy.)

INCONTESTABILITY.] This policy constitutes the entire contract between the parties and shall be incontestable from its date, except for non-payment of premiums and except as otherwise provided in this policy. All statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties, and no such statement shall void this policy unless it is contained in a written application and a copy of such application shall be indorsed upon or attached to this policy when issued.

If the age of the insured has been understated or if the age of the beneficiary has been overstated, the amount payable hereunder shall be such as the premium paid would have purchased at the correct age.

PARTICIPATION.] This policy shall participate in the surplus of the company and beginning not later than the end of the (insert first, second or third) policy year the company will annually determine and account for the portion of the divisible surplus accruing hereon.

DIVIDENDS.] Dividends at the option of the owner of this policy shall on the.....day of.....of each year (here may be inserted "after the first policy year" or "after the second policy year") be either:

1. Paid in cash, or,
2. Applied toward the payment of any premium or premiums, or,
3. Applied to the purchase of paid-up additions to the policy, payable in twenty annual installments at the same times as the original amount insured under this policy is payable. The payments of such twenty installments shall discharge the company from all liability on account of such dividend additions, or,
4. Left to accumulate to the credit of the policy with interest at (here insert a rate not exceeding that used by the company in calculating its reserves) per centum per annum and payable at the maturity of the policy, but withdrawable on any anniversary of the policy.

Unless the owner of this policy shall elect otherwise within three months after the mailing by the company of a written notice requiring such election, the dividends shall be paid in cash.

LOANS.] After three full years' premiums have been paid the company at any time, while this policy is in force, will advance, on the proper assignment of this policy and on the sole security thereof, at a rate of interest not greater than per centum per annum, which interest if not paid annually shall be added to the principal and bear the same rate of interest, a sum equal to, or, at the option of the owner of the policy, less than, the reserve at the end of the current policy year required to provide for the twenty installments payable under this policy and for any dividend additional thereto and no more, computed according to the (designate mortality table adopted by the company for computing reserves) mortality table and interest at the rate of (designate rate of interest adopted by the company for computing reserves) per centum per annum, less (here may be inserted not more than two and one-half) per centum per annum of the amount insured by the policy, and of any dividend additions thereto. The company will deduct, however, from such loan value any existing indebtedness to the company on the policy and any unpaid balance of the premium for the current policy year and may collect interest in advance on the loan to the end of the current policy year. Such loan may be deferred by the company for not exceeding six months after the application therefor is made. Failure to repay any such advance or to pay interest shall not void this policy unless the total indebtedness hereon to the company shall equal or exceed such loan value at the time of such failure, and until one month after notice shall have been mailed by the company to the last known address of the insured and of the assignee, if any. No condition other than as herein provided shall be exacted as a prerequisite to any such advance.

ASSIGNMENT.] No assignment of this policy shall be binding upon the company until it be filed with the company at its said home office. The company assumes no responsibility as to the validity of any assignment.

OPTIONS ON SURRENDER OR LAPSE.] After this policy shall have been in force three full years the owner, within one month after any default may elect,

- (a) To accept the value of the policy in cash, or,
- (b) To have the insurance continued in force from date of default without

future participation and without the right to loans, for its face amount, including any outstanding dividend additions, less any indebtedness to the company hereon, or,

(c) To purchase non-participating paid-up insurance, payable except as hereinafter provided, at the same time and on the same conditions as this policy. The cash value will be the reserve at the date of default required to provide for the twenty installments payable under this policy and for any dividend additions hereto, computed according to the (designate mortality table adopted by the company for computing reserves) mortality table and interest at the rate of (designate rate of interest adopted by the company for computing reserves) per centum per annum, less (here may be inserted not more than two and one-half) per centum of the amount insured by this policy and of any dividend additions thereto, and less any existing indebtedness to the company on this policy. Payment of such cash value may be deferred by the company for not exceeding six months after the application therefor is made. The term for which the insurance will be continued or the amount of the paid-up policy will be such as the cash value would purchase as a net single premium at the attained age of the insured according to the (designate the mortality table adopted by the company for computing reserves) mortality table and interest at the rate of (designate the rate of interest adopted by the company for computing reserves) per centum per annum. If the owner shall not within one month from default surrender this policy to the company at its home office for a cash surrender value or paid-up insurance as provided in options (a) and (c) the insurance will be continued as provided in option (b). The paid-up or continued temporary insurance will be payable in twenty equal installments and a payment of twenty installments under either option shall discharge the company from all liability under this policy. The figures in the following table are computed in accordance with the above provisions and upon the assumption that there is no indebtedness upon the policy, and that there are no outstanding dividend additions. (At the option of the company the following may be here inserted: "The figures apply to a policy for \$1,000. As this contract is for \$. the loan, cash or paid-up insurance, available in any year will be \$. the amount stated in the table for that year.")

	At End of Year	Cash or Loan Value	Paid-up Life Insurance	Continued Insurance		
				Years	Months	Days
3.		\$.....	\$.....			
4.		\$.....	\$.....			
5.		\$.....	\$.....			
6.		\$.....	\$.....			
7.		\$.....	\$.....			
8.		\$.....	\$.....			
9.		\$.....	\$.....			
10.		\$.....	\$.....			
11.		\$.....	\$.....			
12.		\$.....	\$.....			
13.		\$.....	\$.....			
14.		\$.....	\$.....			
15.		\$.....	\$.....			
16.		\$.....	\$.....			

17. \$..... \$.....
 18. \$..... \$.....
 19. \$..... \$.....
 20. \$..... \$.....

(Figures for later years will be furnished upon request.)

REINSTATEMENT.] In case of continued temporary insurance under the above provisions this policy upon evidence of insurability satisfactory to the company may be reinstated within the first three years of the term for which the insurance is continued by payment of arrears of premium with interest at (here insert not greater than six) per centum per annum.

Agents are not authorized to modify this policy or extend the time for paying the premium.

In witness whereof the company has caused this policy to be executed this day of.....

NORTH DAKOTA STANDARD LIFE INSURANCE POLICY.

Endowment Fixed Survivorship Annuity.

Age.....

Amount \$.....

Premium \$.....

of North Dakota.

In consideration of.....dollars, receipt of which is hereby acknowledged, and of the payment of (here insert amounts and times of payments of premiums) until.....full year's premiums shall have been paid or until the prior death of the insured.

Promises to pay at its home office in.....
dollars in twenty equal annual installments of \$.....to the insured, the first installment to be payable on the.....day of.....190... and.....
 if the insured shall die before receiving all the twenty installments herein provided for, the remainder of such twenty installments shall be payable as they fall due to(herein called the beneficiary), insert "his" or "her" executors, administrators or assigns, with(insert "out" if so desired) right of revocation, if (insert "he" or "she") survives the insured, otherwise to the executors, administrators or assigns of the insured.

Should the insured die before (insert date of maturity) this policy shall be payable to the beneficiary (insert "his" or "her") executors, administrators or assigns, if (insert "he" or "she") survives the insured, otherwise to the executors, administrators or assigns of the insured, (the first installment, being payable immediately upon receipt of due proof of the death of the insured)

Any indebtedness to the company on this policy together with the balance, if any, of the then current year's premium, will be deducted from the amounts first payable under this contract.

Should the insured or beneficiary live to receive the twenty installments payable as above provided, the company, beginning one year after the date when the twentieth installment payable hereunder shall fall due, will pay the sum of \$.....annually to the insured, or, in the event of the death of the insured, to the beneficiary, the said annual payment to be due and payable so long as either the insured or beneficiary is living.

CHANGE OF BENEFICIARY.] When the right of revocation has been reserved, or in case of the death of any beneficiary under either a revocable or irrevocable designation, the insured, subject to any existing assignment of the policy, may designate a new beneficiary with or without reserving right of revocation by filing written notice thereof at the home office of the company, accompanied by the policy for suitable indorsement thereon.

If any beneficiary shall die before the insured and the insured shall not have designated a new beneficiary the interest of such beneficiary shall be payable to the insured, (insert "his" or "her") executors, administrators or assigns. If the new beneficiary shall be designated only twenty annual installments will be payable under this policy, and future (if necessary, insert "semi" or "quarterly") annual premiums will be reduced to.....dollars each.

PAYMENT OF PREMIUMS.] The company will accept payment of premiums at other times than as stated above, as follows:

.....

Upon return of this policy accompanied by evidence satisfactory to the company of the death of the beneficiary the company will reduce the future (here insert "annual," "semi-annual" or "quarterly") premiums to \$.....each.

Except as herein provided the payment of a premium or installment thereof shall not maintain the policy in force beyond the date when the next premium or installment thereof is payable. All the premiums are payable in advance at said home office or to any agent of the company upon delivery of a receipt signed by one or more of the following officers of the company (insert titles of officers who may sign receipts) and countersigned by said agent.

A grace of one month subject to an interest charge at the rate of..... per centum per annum shall be granted for the payment of every premium after the first, during which month the insurance will continue in force. If the insured shall die during the month of grace the overdue premium will be deducted from any amount payable hereon in any settlement hereunder.

CONDITIONS.] (The policy may here provide for restrictions of liability by reason of travel, occupation, change of residence and suicide. These restrictions, except such as refer to military and naval service in time of war, must be applicable only to cases where the act of the insured provided against occurs within two years after the issuance of the policy.)

INCONTESTABILITY.] This policy constitutes the entire contract between the parties and shall be incontestable from its date, except for non-payment of premiums and except as otherwise provided in this policy. All statements made by the insured shall in the absence of fraud be deemed representations and not warranties and no such statement shall void this policy unless it is

contained in a written application and a copy of such application shall be indorsed upon or attached to this policy when issued.

If the age of the insured has been understated or if the age of the beneficiary has been overstated, the amount payable hereunder shall be such as the premium paid would have purchased at the correct age.

PARTICIPATION.] This policy shall participate in the surplus of the company and beginning not later than the end of the (insert first, second or third) policy year the company will annually determine and account for the portion of the divisible surplus accruing thereon.

DIVIDENDS.] Dividends at the option of the owner of this policy shall on the day of.....of each year (here may be inserted "after the first policy year" or "after the second policy year") be either:

1. Paid in cash, or,
2. Applied toward the payment of any premium or premiums, or,
3. Applied to the purchase of paid-up additions to the policy, payable in twenty annual installments at the same time as the original amount insured under this policy is payable. The payment of such twenty installments shall discharge the company from all liability on account of such dividend additions, or,
4. Left to accumulate to the credit of the policy with interest at (here insert a rate not exceeding that used by the company in calculating its reserves) per centum per annum and payable at the maturity of the policy, but withdrawable on any anniversary of the policy.

Unless the owner of this policy shall elect otherwise within three months after the mailing by the company of a written notice requiring such election, the dividends shall be paid in cash.

LOANS.] After three full years' premiums have been paid the company at any time, while this policy is in force, will advance on proper assignment of this policy and on the sole security thereof, at a rate of interest not greater than.....per centum per annum, which interest if not paid annually shall be added to the principal and bear the same rate of interest, a sum equal to, or, at the option of the owner of the policy, less than, the reserve at the end of the current policy year required to provide for the twenty installments payable under this policy and for any dividend additions thereto, and no more, computed according to the (designate mortality table adopted by the company for computing reserves) mortality table, and interest at the rate of (designate rate of interest adopted by the company for computing reserves) per centum per annum, less (here may be inserted not more than two and one-half per centum) of the amount insured by this policy and of any dividend addition thereto. The company, however, will deduct from such loan value any existing indebtedness to the company on the policy and any unpaid balance of the premium for the current policy year, and may collect interest in advance on the loan to the end of the current policy year. Such loan may be deferred by the company for not exceeding six months after the application therefor is made. Failure to repay any such advance or to pay interest shall not void this policy unless the total indebtedness hereon to the company shall equal or exceed such loan value at the time of such failure, and until one month after notice shall have been mailed by the company to the last known address of the in-

sured, and of the assignee, if any. No condition other than as herein provided shall be exacted as a prerequisite to any such advance.

ASSIGNMENT.] No assignment of this policy shall be binding upon the company until it be filed with the company at its said home office. The company assumes no responsibility as to the validity of the assignment.

OPTIONS ON SURRENDER OR LAPSE.] After this policy shall have been in force three full years, the owner, within one month after any default, may elect:

(a) To accept the value of this policy in cash, or,

(b) To have the insurance continued in force from date of default, without future participation and without the right of loans, for its face amount, including outstanding dividend additions, less any indebtedness to the company hereon, or,

(c) To purchase non-participating paid-up insurance, payable, except as hereinafter provided, at the same time and on the same conditions as this policy. The cash value will be the reserve at the date of default required to provide for the twenty installments payable under this policy and for any dividend additions thereto, computed according to the (designate mortality table adopted by the company for computing reserves) mortality table and interest at the rate of (designate rate of interest adopted by the company for computing reserves) per centum per annum, less (here may be inserted not more than two and one-half) per centum of the amount insured by this policy and of any dividend additions thereto, and less any existing indebtedness to the company on this policy. Payment of such cash value may be deferred by the company for not exceeding six months after the application therefor is made. The term for which the insurance will be continued or the amount of the paid-up policy will be such as the cash value will purchase as a net single premium at the attained age of the insured according to the (designate the mortality table adopted by the company for computing reserves) mortality table and interest at the rate of (designate rate of interest adopted by the company for computing reserves) per centum per annum. If the sum applicable to the purchase of temporary insurance shall be more than sufficient to continue the insurance to the end of the endowment term named in this policy, the excess shall be used to purchase in the same manner non-participating, paid-up pure endowment, payable at the end of the endowment term on the same conditions.

If the owner shall not within one month from default surrender this policy to the company at its home office for a cash surrender value or for paid-up insurance as provided in options (a) and (c) the insurance will be continued as provided in option (b). The paid-up or continued temporary and pure endowment insurance will be payable in twenty equal annual installments and the payment of twenty installments under either option shall discharge the company from all liability under this policy.

The figures in the following table are computed in accordance with the above provisions and upon the assumption that there is no indebtedness on the policy, and that there are no outstanding dividend additions.

(At the option of the company the following may be here inserted: "The figures apply to a policy of \$1,000. As this contract is for \$. the

loan, cash, paid-up insurance or pure endowment available in any year will be.....the amount stated in the table for that year.'')

At End of Year	Cash or Loan Value	Paid-up Endowment Insurance	Continued Insurance			Pure Endow- ments
			Years	Months	Days	
3	\$.	\$.				\$.
4	\$.	\$.				\$.
5	\$.	\$.				\$.
6	\$.	\$.				\$.
7	\$.	\$.				\$.
8	\$.	\$.				\$.
9	\$.	\$.				\$.
10	\$.	\$.				\$.
11	\$.	\$.				\$.
12	\$.	\$.				\$.
13	\$.	\$.				\$.
14	\$.	\$.				\$.
15	\$.	\$.				\$.
16	\$.	\$.				\$.
17	\$.	\$.				\$.
18	\$.	\$.				\$.
19	\$.	\$.				\$.
20	\$.	\$.				\$.

(Figures for later years will be furnished upon request.)

REINSTATEMENT.] In case of continued temporary insurance under the above provisions this policy upon evidence of insurability satisfactory to the company may be reinstated within the first three years of the term for which the insurance is continued by payment of arrears of premiums with interest at (here insert not greater than six) per centum per annum.

Agents are not authorized to modify this policy or extend time for paying a premium.

In witness whereof, the company has caused this policy to be executed this day of.....

NORTH DAKOTA STANDARD LIFE INSURANCE POLICY.

Term.

Age.....

Amount \$.....

Premium \$.....

of North Dakota.

In consideration of.....dollars, receipt of which is hereby acknowledged, and of the payment of (here insert amounts and times of payments of premiums) until full year's premiums shall have been paid or until the prior death of the insured, promises to pay upon receipt at the

home office of the company in of due proof of the death of
of.....county of.....State of North
 Dakota, herein called the insured, within.....years from the date hereof,
dollars, less any indebtedness hereon to the company and any
 unpaid portion of the premium for the then current policy year, at said home
 office, to.....beneficiary...with (insert "out" if so desired) right
 of revocation.

CHANGE OF BENEFICIARY.] When the right of revocation has been reserved,
 or in case of the death of any beneficiary under either a revocable or irrevocable
 designation, the insured, subject to any existing assignment of the policy, may
 designate a new beneficiary with or without reserving the right of revocation by
 filing written notice thereof at the home office of the company, accompanied
 by the policy for suitable indorsement thereon. If any beneficiary shall die
 before the insured and the insured shall not have designated a new beneficiary
 the interest of such beneficiary shall be payable to the insured, (insert "his"
 or "her") executors, administrators or assigns.

PAYMENT OF PREMIUMS.] The company will accept payment of premiums
 at other times than as stated above, as follows:

.....

Except as herein provided the payment of a premium or installment thereof
 shall not maintain the policy in force beyond the date when the next premium
 or installment thereof is payable.

All premiums are payable in advance at said home office, or to an agent of
 the company upon delivery of a receipt signed by one or more of the following
 officers of the company (insert titles of officers who may sign receipts) and
 countersigned by said agent.

A grace of one month subject to an interest charge at the rate of.....
 per centum per annum shall be granted for the payment of every premium
 after the first, during which month the insurance shall continue in force. If
 the insured shall die during the month of grace the overdue premium will be
 deducted from any amount payable hereon in any settlement hereunder.

CONDITIONS.] (The policy may here provide for restrictions of liability by
 reason of travel, occupation, change of residence and suicide. These restric-
 tions, except such as refer to military and naval service in time of war, must
 be applicable only to cases where the act of the insured provided against occurs
 within two years after issuance of the policy.)

INCONTESTABILITY.] This policy constitutes the entire contract between
 the parties and shall be incontestable from its date, except for non-payment
 of premiums and except as otherwise provided in this policy. All statements
 made by the insured shall in the absence of fraud be deemed representations
 and not warranties and no such statement shall void this policy unless it is
 contained in a written application and a copy of such application shall be
 indorsed upon or attached to this policy when issued.

If the age of the insured has been understated or if the age of the bene-
 ficiary has been overstated, the amount payable hereunder shall be such as the
 premium paid would have purchased at the correct age.

PARTICIPATION.] This policy shall participate in the surplus of the com-

pany and beginning not later than the end of the (insert first, second or third) policy year the company will annually determine and account for the portion of the divisible surplus accruing thereon.

DIVIDENDS.] Dividends at the option of the owner of this policy shall on the day of.....of each year (here may be inserted "after the first policy year" or "after the second policy year") be either:

1. Paid in cash, or,
2. Applied toward the payment of any premium or premiums, or (the policy, at the option of the company, may here provide for a further option, as follows):

3. Left to accumulate to the credit of the policy with interest at (here insert a rate not exceeding that used by the company in calculating its reserves) per centum per annum and payable at the maturity of the policy, or at the expiration of the term, but withdrawable on any anniversary of the policy.

Unless the owner of this policy shall elect otherwise within three months after the mailing by the company of a written notice requiring such election, the dividends shall be paid in cash.

ASSIGNMENT.] No assignment of this policy shall be binding upon the company, until it be filed with the company at its said home office. The company assumes no responsibility as to the validity of any assignment.

(If the term of the policy is for more than twenty years, the company shall provide for continuance of insurance on surrender or lapse in the following form:)

CONTINUANCE OF INSURANCE ON LAPSE.] In event of default in premium payments after this policy shall have been in force three full years, the reserve hereon according to the (designate mortality table adopted by the company for computing reserves) mortality table and interest at the rate of (designate rate of interest adopted by the company for computing reserves) per centum per annum, less (here may be inserted not more than two and one-half) per centum of the amount insured by this policy will be applied to the purchase of non-participating continued temporary insurance for the face amount of this policy at net single premium rates at the attained age of the insured according to the same table of mortality and rate of interest.

TABLE OF CONTINUED INSURANCE.

At End of Year	Years	Continued Insurance Months	Days
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			

15	.....	.....	.....
16	.....	.....	.....
17	.....	.....	.....
18	.....	.....	.....
19	.....	.....	.....
20	.....	.....	.....

(Figures for later years will be furnished on request.)

(If the term of the policy is for more than twenty years the company shall provide for reinstatement in the following form:)

REINSTATEMENT.] Upon evidence of insurability satisfactory to the company this policy may be reinstated within the first three years of the term for which the insurance is continued by payment of arrears of premiums with interest at (here insert not greater than six) per centum per annum.

OPTIONS AT MATURITY.] The insured, by written notice to the company at its home office and with written consent of the assignee and irrevocable beneficiary, if any, may elect to have the net sum payable under this policy paid either in cash or as follows:

1. By the payment of interest thereon at per centum per annum, payable annually to the payee under this policy at the end of each year during the life of the payee and by the payment upon the death of the payee of the said net sum and accrued interest to the executors, administrators or assigns of the payee, unless otherwise directed in said notice.

2. By the payment of equal annual installments for a specified number of years, the first installment being payable immediately, in accordance with the following table for each \$1,000 of said net sum.

3. By the payment of equal annual payments payable at the beginning of each year for a fixed period of twenty years and for so many years longer as the payee shall survive, in accordance with the following table for each \$1,000 of said net sum.

Installments payable under options (2) or (3) which shall not have been paid prior to the death of the payee shall be paid, unless otherwise directed in said notice, to the executors, administrators, or assigns of the payee.

If the insured shall not have directed otherwise the beneficiary may, after the death of the insured, by like written notice, and with the written consent of the assignee, if any, select either of the above options.

Unless otherwise specified by the insured the payee may on any interest date receive the amount yet due under option (1), and may at any time receive the commuted value of payments yet to be made, computed upon the same basis as option (2) in the following table, provided that no such commutation will be made under (3) except after the death of the payee occurring within the aforesaid twenty years.

TABLE OF INSTALLMENTS FOR EACH \$1,000.

(Option 2)

(Option 3)

Number of Annual Installments	Amount of Each Installment	Age of Payee When Policy Becomes Payable	Amount of Each Installment
-------------------------------------	----------------------------------	--	----------------------------------

(Blank lines)

Agents are not authorized to modify this policy or to extend the time for paying a premium.

In witness whereof, the company has caused this policy to be executed this day of.....

NORTH DAKOTA STANDARD LIFE INSURANCE POLICY.

Term with right to renew and change.

Age.....

Amount \$.....

Premium \$.....

Of North Dakota.

In consideration of.....dollars, receipt of which is hereby acknowledged, and of the payment of (here insert amounts and times of payments of premiums) until.....full year's premiums shall have been paid or until the prior death of the insured.

Promises to pay upon receipt at the home office of the company in..... of due proof of the death of.....of....., County of....., State of North Dakota, herein called the insured, within.....years from the date hereof.....dollars, less any indebtedness hereon to the company and any unpaid portion of the premium for the then current policy year at said home office, to beneficiar.....with (insert "out" if so desired) right of revocation.

CHANGE OF BENEFICIARY.] When the right of revocation has been reserved, or in case of the death of any beneficiary under either a revocable or irrevocable designation, the insured, subject to any existing assignment of the policy, may designate a new beneficiary with or without reserving the right of revocation by filing written notice thereof at the home office of the company, accompanied by the policy for suitable indorsement thereon. If any beneficiary shall die before the insured and the insured shall not have designated a new beneficiary the interest of such beneficiary shall be payable to the insured, (insert "his" or "her") executors, administrators or assigns.

PAYMENT OF PREMIUMS.] The company will accept payment of premiums at other times than as stated above, as follows:

.....

Except as herein provided the payment of a premium or installment thereof shall not maintain the policy in force beyond the date when the next premium or installment thereof is payable.

All premiums are payable in advance at said home office, or to an agent of the company upon delivery of a receipt signed by one or more of the following officers of the company (insert titles of officers who may sign receipts) and countersigned by said agent.

A grace of one month subject to an interest charge at the rate of per centum per annum shall be granted for the payment of every premium after the first, during which month the insurance shall continue in force. If the insured shall die during the month of grace the overdue premium will be deducted from any amount payable hereon in any settlement hereunder.

CONDITIONS.] (The policy may here provide for restrictions of liability by reason of travel, occupation, change of residence and suicide. These restrictions, except such as refer to military and naval service in time of war, must be applicable only to cases where the act of the insured provided against occurs within two years after the issuance of the policy.)

INCONTESTABILITY.] This policy constitutes the entire contract between the parties and shall be incontestable, from its date, except for non-payment of premiums and except as otherwise provided in this policy. All statements made by the insured shall in the absence of fraud be deemed representations and not warranties and no such statement shall void this policy unless it is contained in a written application and a copy of such application shall be indorsed upon or attached to this policy when issued.

If the age of the insured has been understated, the amount payable hereunder shall be such as the premium paid would have purchased at the correct age.

PARTICIPATION.] This policy shall participate in the surplus of the company and beginning not later than the end of the (insert first, second or third) policy year the company will annually determine and account for the portion of the divisible surplus accruing hereon.

DIVIDENDS.] Dividends at the option of the owner of this policy shall on the.....day of.....of each year (here may be inserted "after the first policy year" or "after the second policy year") be either:

1. Paid in cash, or,

2. Applied toward the payment of any premium or premiums, (the policy, at the option of the company, may here provide for a further option, as follows):

3. Left to accumulate to the credit of the policy with interest at (here insert a rate not exceeding that used by the company in calculating its reserves) per centum per annum and payable at the maturity of the policy, or at the expiration of the term, but withdrawable on any anniversary of the policy.

Unless the owner of this policy shall elect otherwise within three months after the mailing by the company of a written notice requiring such election, the dividends shall be paid in cash.

PRIVILEGE OF RENEWAL.] The owner of this policy, if the insured be not over the age of sixty-five years, may renew this policy for the further terms of.....years each by written notice to the company at its said home office accompanied by this policy for suitable indorsement on or before the expiration of the insurance hereunder and by paying the premiums to be fixed by the age on the birthday nearest to the date of such renewal in accordance with the following table for each one thousand dollars of insurance; if the insured shall be over the age of sixty-five years this policy may upon similar notice be surrendered for an ordinary life policy which shall require premiums during life in accordance with the following table for each one thousand dollars of insurance.

TABLE OF PREMIUMS FOR RENEWALS.

Attained Age	Years Term Premium Payable in Advance for Each \$1,000	Attained Age	Ordinary Life Premium Payable in Advance for Each \$1,000
-----------------	--	-----------------	---

(Blank lines)

PRIVILEGE TO CHANGE TO OTHER FORMS OF POLICIES.] The owner of this policy may at any time within the first.....years exchange this policy for a participating policy for the same amount or any less amount upon the ordinary life, limited payment life, or endowment plan upon any anniversary of the policy, or within the month of grace by surrendering the policy to the company at said home office with written notice of the election and by paying the premiums to be fixed by the age on the birthday nearest to the date of such exchange according to the rates of the company then in force.

ASSIGNMENT.] No assignment of this policy shall be binding upon the company, until it be filed with the company at its said home office. The company assumes no responsibility as to the validity of any assignment.

(If the term of the policy is for more than twenty years, the company shall provide for continuance of insurance on surrender or lapse in the following form:)

CONTINUANCE OF INSURANCE ON LAPSE.] In event of default in premium payments after this policy shall have been in force three full years, the reserve hereon according to the (designate mortality table adopted by the company for computing reserves) mortality table and interest at the rate of (designate rate of interest adopted by the company for computing reserves) per centum per annum, less (here may be inserted not more than two and one-half) per centum of the amount insured by this policy will be applied to the purchase of non-participating continued temporary insurance for the face amount of this policy at net single premium rates at the attained age of the insured according to the same table of mortality and rate of interest.

TABLE OF CONTINUED INSURANCE.

At End of Year	Years	Continued Insurance Months	Days
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

(Figures for later years will be given upon request.)

(If the term of the policy is for more than twenty years the company shall provide for reinstatement in the following form:)

REINSTATEMENT.] Upon evidence of insurability satisfactory to the company this policy may be reinstated within the first three years of the term for which the insurance is continued by payment of arrears of premiums with interest at (here insert not greater than six) per centum per annum.

OPTIONS AT MATURITY.] The insured, by written notice to the company at its home office and with written consent of the assignee and irrevocable beneficiary, if any, may elect to have the net sum payable under this policy paid either in cash or as follows:

1. By the payment of interest thereon at per centum per annum, payable annually to the payee under this policy at the end of each year during the life of the payee and by the payment upon the death of the payee of the said net sum and accrued interest to the executors, administrators or assigns of the payee, unless otherwise directed in said notice.

2. By the payment of equal annual installments for a specified number of years, the first installment being payable immediately, in accordance with the following table for each \$1,000 of said net sum.

3. By the payment of equal annual payments payable at the beginning of each year for a fixed period of twenty years and for so many years longer as the payee shall survive, in accordance with the following table for each \$1,000 of said net sum.

Installments payable under options (2) or (3) which shall not have been paid prior to the death of the payee shall be paid, unless otherwise directed in said notice, to the executors, administrators, or assigns of the payee.

If the insured shall not have directed otherwise the beneficiary may, after the death of the insured, by like written notice, and with the written consent of the assignee, if any, select either of the above options.

Unless otherwise specified by the insured the payee may on any interest date receive the amount yet due under option (1), and may at any time receive the commuted value of payments yet to be made, computed upon the same basis as option (2) in the following table; provided that no such commutation will be made under (3) except after the death of the payee occurring within the aforesaid twenty years.

TABLE OF INSTALLMENTS FOR EACH \$1,000.

(Option 2)		(Option 3)	
Number of Annual Installments	Amount of Each Installment	Age of Payee When Policy Becomes Payable	Amount of Each Installment
(Blank lines)			

Agents are not authorized to modify this policy or to extend the time for paying a premium.

In witness whereof, the company has caused this policy to be executed this day of (1907, Ch. 140, § 2.)

§ 6635a. SINGLE PREMIUM POLICIES.] Single premium policies may be issued in any form prescribed in section 2, omitting therefrom provisions or portions thereof applicable only to other than single premium policies. Non-participating policies may be issued in any form prescribed in section 2 if they shall contain a provision that the policy shall be non-participating, and such

policies shall omit therefrom clauses for participation in the surplus of the company. (1907, Ch. 140, § 3.)

§ 6635b. TERM INSURANCE.] Policies issued on the standard forms prescribed in section 6635 may provide for not more than one year preliminary term insurance by incorporation therein of the following clause immediately preceding the "change of beneficiary" clause: "The first year's insurance under this policy is term insurance." If the premium charged for term insurance under a limited payment life preliminary term policy providing for the payment of all premiums thereon in less than twenty years from the date of the policy or under an endowment preliminary term policy, exceeds that charged for like insurance under twenty payment preliminary term policies of the same company, the reserve thereon at the end of any year, including the first, shall not be less than the reserve on the twenty payment preliminary term policy issued in the same year and at the same age together with an amount which shall be equivalent to the accumulation of a net level premium sufficient to provide for a pure endowment at the end of the premium-payment period equal to the difference between the value at the end of such period of such twenty payment preliminary term policy and the full reserve at such time of such a limited payment or endowment policy. (1909, Ch. 149; 1907, Ch. 140, § 4.)

§ 6635c. PROVISIONS OF LIFE POLICIES.] No policy of life insurance in form other than is provided in section 6635 shall be issued in this state or be issued by a life insurance company organized under the laws of this state unless the same shall contain the following provisions:

1. A provision that all premiums shall be payable in advance either at the home office of the company, or to an agent of the company, upon delivery of a receipt signed by one or more of the officers who shall be named in the policy.

2. A provision for a grace of one month for the payment of every premium after the first, which may be subject to an interest charge during which month the insurance shall continue in force, which provision may contain a stipulation that if the insured shall die during the month of grace the overdue premium will be deducted in any settlement under the policy.

3. A provision that the policy shall constitute the entire contract between the parties and shall be incontestable after two years from its date, except for non-payment of premiums and except for violation of the conditions of the policy relating to naval and military services in time of war.

4. A provision that all statements made by the insured shall, in the absence of fraud be deemed representations and not warranties and that no such statement shall void the policy unless it is contained in a written application and a copy of such application shall be indorsed upon or attached to the policy when issued.

5. A provision that if the age of the insured has been understated the amount payable under the policy shall be such as the premium would have purchased at the correct age.

6. A provision that the policy shall participate in the surplus of the company and that, beginning not later than the end of the third policy year, the company will annually determine and account for the portion of the divisible surplus accruing on the policy, and that the owner of the policy shall have the right each year to have the current dividend arising from such participation

paid in cash and if the policy shall provide other dividend options it shall further provide that if the owner of the policy shall not elect any such other options the dividends shall be paid in cash. This provision shall not be required in non-participating policies.

7. A provision that after three full year's premiums have been paid the company at any time while the policy is in force will advance on proper assignment of the policy and on the sole security thereof, at a specified rate of interest, a sum equal to, or, at the option of the owner of the policy, less than, the reserve at the end of the current policy year on the policy and on any dividend additions thereto, specifying the mortality table and the rate of interest adopted for computing such reserve, less a sum not more than two and one-half per centum of the amount insured by the policy and of any dividend additions thereto; and that the company will deduct from such loan value any existing indebtedness on the policy and any unpaid balance of the premium for the current policy year, and may collect interest in advance on the loan to the end of the current policy year; which provision may further provide that such loan may be deferred for not exceeding six months after the application therefor is made. It shall be further stipulated in the policy that failure to repay any such advance or to pay interest shall not void the policy unless the total indebtedness thereon to the company shall equal or exceed such loan value at the time of such failure nor until one month after notice shall have been mailed by the company to the last known address of the insured and of the assignee, if any. No condition other than as herein provided shall be exacted as a prerequisite to any such advance. This provision shall not be required in term insurances.

8. A provision which, in event of default in premium payments, after premium shall have been paid for three years, shall secure to the owner of the policy a stipulated form of insurance, the net value of which shall be at least equal to the reserve at the date of default on the policy and on any dividend additions thereto, specifying the mortality table and rate of interest adopted for computing such reserves, less a sum of not more than two and one-half per centum of the amount insured by the policy and of any existing dividend additions thereto, and less any existing indebtedness to the company on the policy. Such provision shall stipulate that the policy may be surrendered to the company at its home office within one month from the date of default for a specified cash value at least equal to the sum which would otherwise be available for the purchase of insurance as aforesaid and may stipulate that the company may defer payment for not more than six months after the application therefor is made. This provision shall not be required in term insurance of twenty years or less.

9. A table showing in figures the loan values, and the options available under the policies each year upon default in premium payments during at least the first twenty years of the policy, beginning with the year in which such values and options become available.

10. A provision that if, in event of default in premium payments, the value of the policy shall be applied to the purchase of other insurance, and if such insurance shall be in force and the original policy shall not have been surrendered to the company and cancelled, the policy may be reinstated within

three years from such default, upon evidence of insurability satisfactory to the company and payment of arrears of premiums with interest.

11. A provision that when a policy shall become a claim by the death of the insured settlement shall be made upon receipt of due proof of death, or not later than two months after receipt of such proof.

12. A table showing the amounts of installments in which the policy may provide its proceeds may be payable.

13. A title on the face and on the back of the policy correctly describing the same.

Any of the foregoing provisions or portions thereof relating to premiums not applicable to single [premium] policies, shall to that extent not be incorporated therein. (1907, Ch. 140, § 5.)

§ 6635d. PROVISIONS PROHIBITED.] No policy of life insurance in form other than is prescribed in section 6635 shall be issued or delivered in this state or be issued by a life insurance company organized under the laws of this state, if it contain any of the following provisions:

1. A provision for forfeiture of the policy for failure to repay any loan on the policy or to pay interest on such loan while the total indebtedness on the policy is less than the loan value thereof; or any provision for forfeiture for failure to repay any such loan or to pay interest thereon, unless such provision contain a stipulation that no such forfeiture shall occur until at least one month after notice shall have been mailed by the company to the last known address of the insured and of the assignee, if any.

2. A provision limiting the time within which any action at law or in equity may be commenced to less than five years after the cause of action shall accrue.

3. A provision by which the policy shall purport to be issued or to take effect before the original application for the insurance was made, if thereby the assured would rate at an age younger than his age at date when the application was made, according to his age at nearest birthday.

4. A provision for any mode of settlement at maturity of less value than the amount insured on the face of the policy plus dividend additions, if any, less any indebtedness to the company on the policy and less any premiums that may by the terms of the policy be deducted. (1907, Ch. 140, § 6.)

§ 6635e. PRELIMINARY TERM POLICIES.] Preliminary term policies not issued on the standard forms shall also be subject to the provisions of section 6635b. (1907, Ch. 140, § 7.)

§ 6635f. FORM FILED WITH INSURANCE COMMISSIONER.] No policy of life insurance shall be issued or delivered in this state, or be issued by a life insurance company organized under the laws of this state, until the form of the same has been filed with the insurance commissioner; and after the insurance commissioner shall have notified any company of his disapproval of any form it shall be unlawful for such company to issue any policy in the form so disapproved. The commissioner's action shall be subject to review by any court of competent jurisdiction. (1907, Ch. 140, § 8.)

§ 6635g. PROVISIONS RESTRICTED.] The policies of a life insurance company, not organized under the laws of this state, may contain any provision which the law of this state, territory, district or county under which the com-

pany is organized, prescribes shall be in such policies when issued in this state, and the policies of a life insurance company organized under the laws of this state may, when issued or delivered in any other state, territory, district or county, contain any provision required by the laws of the state, territory, district or county in which the same are issued, anything in this act to the contrary notwithstanding. (1907, Ch. 140, § 9.)

§ 6635h. WHAT COMPANIES EXEMPT.] This act (sections 6634-6635i) shall not apply to annuities, industrial policies or to corporations or associations operating on the assessment or fraternal plan. (1907, Ch. 140, § 10.)

§ 6635i. "COMPANY" DEFINED.] Wherever the word "company" is used in this act (sections 6634-6635i) it shall be held to include corporations and associations. (1907, Ch. 140, § 11.)

§ 6636. POLICY MUST CONTAIN ENTIRE CONTRACT.] Every policy of life insurance issued or delivered within this state on or after the first day of January, nineteen hundred and eight, by any life insurance corporation doing business within the state shall contain the entire contract between the parties. (1907, Ch. 155.)

CHAPTER 82.

POLICIES OF HEALTH OR ACCIDENT INSURANCE.

§ 6637. TYPOGRAPHY OF POLICY, AND PROVISIONS REQUIRED.] No policy of insurance against loss or damage by the sickness, bodily injury or death by accident of the assured shall be issued or delivered in this state unless the same shall be plainly printed, no portion thereof in smaller than long primer type, and every policy so issued and delivered shall contain the following provisions:

1. A provision that notice of accident or disability shall be given within forty (40) days, unless such notice may be shown not to have been reasonably possible, to some certain office or officer designated therein.

2. A provision that the policy or certificate contains the entire contract.

3. A provision that if a past-due premium is accepted after lapse, such acceptance shall reinstate the policy in full.

4. A provision that if the occupation of the insured be changed to a more hazardous one, then the benefit and payment to be such as the premium would pay for in that occupation.

5. All benefits called for by the policy shall be specifically stated in full therein, and all exceptions shall be stated specifically and with the same prominence as the benefits. (1911, Ch. 158, § 1.)

§ 6638. PROVISIONS FORBIDDEN.] No policy of insurance against loss or damage by the sickness, bodily injury, or death by accident of the assured shall be issued or delivered in this state if it contain any of the following provisions:

1. A provision limiting the time in which an action at law or in equity may be commenced to less than two years after date upon which final proof of loss or disability shall have been filed with the company.

2. A provision referring to the constitution, by-laws or rules of the company or association or attempting to make the same a part of the policy.

3. A provision for the deduction of advance premiums or assessments from benefits payable under the terms of the policy.

4. A provision limiting the amount of indemnity to be paid to a sum less than the indemnity as stated in the policy and for which the premium has been paid. (1911, Ch. 158, § 2.)

§ 6639. APPLICATION OF THIS CHAPTER.] This act shall apply to all companies, corporations, or associations issuing a policy of insurance against loss or damage caused by the sickness, bodily injury, or death by accident of the assured, except fraternal beneficiary associations. (1911, Ch. 158, § 3.)

§ 6640. FORM OF POLICY TO BE FILED WITH INSURANCE COMMISSIONER FOR APPROVAL.] No policy of insurance against loss or damage by the sickness, bodily injury, or death by accident of the assured shall be issued or delivered in this state by any company, corporation, or association until the form of the same together with a table of rates and classification of risks has been filed with the commissioner of insurance; and after the commissioner of insurance shall have notified any company, corporation, or association of his disapproval of any form, stating his reasons therefor in writing, it shall be unlawful for such company, corporation, or association to issue any policy in the form so disapproved. The commissioner's action shall be subject to review by any court of competent jurisdiction. (1911, Ch. 158, § 4.)

CHAPTER 83.

INDEMNITY.

§ 6641. DEFINED.] Indemnity is a contract by which one engages to save another from a legal consequence of the conduct of one of the parties or of some other person. (R. C. 1905, § 6065.)

Contracts of indemnity within the statute of frauds. 42 Am. St. Rep. 186.

As to similar provision in Cal. Civ. Code, section 2772. See *Graves v. Moore*, 58 Cal. 435; *Magee v. McManus*, 70 Cal. 553, 12 Pac. 451.

§ 6642. AGAINST UNLAWFUL ACT VOID.] An agreement to indemnify a person against an act thereafter to be done is void, if the act is known by such person at the time of doing it to be unlawful. (R. C. 1905, § 6066.)

Validity of agreement to indemnify bail in a criminal case. 4 L. R. A. 78; 20 L. R. A. (N. S.) 58.

Agreements to indemnify against illegal acts. 40 Am. Dec. 425.

§ 6643. AGAINST ACT DONE VALID, UNLESS FELONY.] An agreement to indemnify a person against an act already done is valid, even though the act was known to be wrongful, unless it was a felony. (R. C. 1905, § 6067.)

§ 6644. AGAINST ACT OF PERSON INCLUDES AGENTS.] An agreement to indemnify against the acts of a certain person, applies not only to his acts and their consequences, but also to those of his agents. (R. C. 1905, § 6068.)

§ 6645. SEVERAL INCLUDES EACH.] An agreement to indemnify several persons applies to each unless a contrary intention appears. (R. C. 1905, § 6069.)

§ 6646. WHEN LIABLE JOINTLY WITH PERSON INDEMNIFIED.] One who indemnifies another person against an act to be done by the latter, is liable

jointly with the person indemnified and separately to every person injured by such act. (R. C. 1905, § 6070.)

§ 6647. RULES TO BE APPLIED IN INTERPRETATION.] In the interpretation of a contract of indemnity the following rules are to be applied, unless a contrary intention appears:

1. Upon an indemnity against liability, expressly or in other equivalent terms, the person indemnified is entitled to recover upon becoming liable.

2. Upon an indemnity against claims or demands, or damages or costs, expressly or in other equivalent terms, the person indemnified is not entitled to recover without payment thereof.

3. An indemnity against claims or demands, or liability, expressly or in other equivalent terms, embraces the costs of defense against such claims, demands or liability incurred in good faith and in the exercise of reasonable discretion.

4. The person indemnifying is bound on request of the person indemnified to defend actions or proceedings brought against the latter in respect to the matters embraced by the indemnity; but the person indemnified has the right to conduct such defense, if he chooses to do so.

5. If after request the person indemnifying neglects to defend the person indemnified, a recovery against the latter suffered by him in good faith is conclusive in his favor against the former.

6. If the person indemnifying, whether he is a principal or a surety in the agreement, has not reasonable notice of the action or proceedings against the person indemnified, or is not allowed to control its defense, judgment against the latter is only presumptive evidence against the former.

7. A stipulation, that a judgment against the person indemnified shall be conclusive upon the person indemnifying, is inapplicable if he had a good defense upon the merits which by want of ordinary care he failed to establish in the action. (R. C. 1905, § 6071.)

One suing on contract of indemnity must show he was injured or became liable to another for damages growing out of the transaction indemnified against. *Cramer v. Building & Loan Ass'n*, 6 S. D. 341, 61 N. W. 35.

Indemnification of bail in criminal action is governed by these sections. *Western Surety Co. v. Kelley*, 27 S. D. 465, 131 N. W. 808.

§ 6648. ENGAGEMENT TO ANSWER FOR VIOLATION OF DUTY. REIMBURSEMENT.] When one at the request of another engages to answer in damages, whether liquidated or unliquidated, for any violation of duty on the part of the latter, he is entitled to be reimbursed in the same manner as a surety for whatever he may pay. (R. C. 1905, § 6072.)

§ 6649. WHEN SURETIES CALLED BAIL.] Upon those contracts of indemnity which are taken in legal proceedings as security for the performance of an obligation imposed or declared by the tribunals and known as undertakings or recognizances, the sureties are called bail. (R. C. 1905, § 6073.)

As verb word "bail" means to deliver arrested person to sureties upon their giving security for his appearance in court. *State v. Western Surety Co.*, 26 S. D. 170, 128 N. W. 173.

Presumption that obligation is joint and not several which arises under section 1118 does not depend on particular obligation imposed on persons

therein named as bail. *State v. Western Surety Co.*, 26 S. D. 170, 128 N. W. 173.

§ 6650. OBLIGATIONS OF BAIL, HOW GOVERNED.] The obligations of bail are governed by the statutes specially applicable thereto. (R. C. 1905, § 6074.)

PENAL CODE.

CHAPTER 45.

LOTTERIES.

§ 9669. INSURING LOTTERY TICKETS.] Every person who insures or receives any consideration for insuring for or against the drawing of any ticket, share or interest in any lottery or for or against the drawing of any number, or ticket or number of any ticket in any lottery; and every person who receives any valuable consideration upon any agreement to pay any sum, or to deliver any property or thing in action in the event that any ticket, share or interest in any lottery, or any number or ticket or number of any ticket in any lottery shall prove fortunate or unfortunate, or shall be drawn or not drawn on any particular day or in any particular order; and every person who promises, agrees or offers to pay any sum of money or to deliver any property or thing in action, or to do or forbear to do anything for the benefit of any other person, with or without consideration, upon any event whatever connected with any lottery, is guilty of a misdemeanor. (R. C. 1905, § 8963.)

§ 9670. ADVERTISING SAME.] Every person who, by writing or printing, by circulars or letters or in any other way, advertises or publishes any offer, notice or proposal for any violation of the last section, is guilty of a misdemeanor. (R. C. 1905, § 8964.)

CHAPTER 58.

ARSON.

§ 9499. ARSON. NIGHTTIME. DESTROYING LIFE.] Every person who willfully and maliciously burns, in the nighttime, the dwelling house of another or of which he is a lessee or tenant, whereby the life of any person is destroyed, or who, in the night time, willfully and maliciously sets fire to any other building, owned by himself or another, by the burning whereof such dwelling house shall be burnt in the night time, whereby the life of any person is destroyed, shall be deemed guilty of murder in the second degree. (R. C. 1905, § 8826.)

As to similar provision in Cal. Pen. Code, sections 447-449. See *People v. Giacomella*, 71 Cal. 48, 12 Pac. 302; *People v. Russell*, 81 Cal. 616, 23 Pac. 418; *Clugston v. Garretson*, 103 Cal. 441, 37 Pac. 469; *People v. Mooney*, 127 Cal. 339, 59 Pac. 761.

§ 9849. ARSON DEFINED.] Arson is the willful and malicious burning of a building with intent to destroy it. (R. C. 1905, § 9123.)

Information charging facts constituting arson in third degree as defined by statute is sufficient. *State v. Young*, 9 N. D. 165, 82 N. W. 420; *State v. McDonald*, 16 S. D. 78, 91 N. W. 447.

Crime of arson and who may commit. 101 Am. St. Rep. 21.

What constitutes arson. 81 Am. Dec. 65.

Prisoner burning prison to escape. 21 Am. Rep. 257.

§ 9850. BUILDING DEFINED.] Any house, edifice, structure, vessel or other erection, capable of affording shelter for human beings, or appurtenant to or connected with an erection so adapted, is a "building" within the meaning of the last section. (R. C. 1905, § 9124.)

Freight car as buildings. *State v. Lintner*, 19 S. D. 447, 104 N. W. 205.

What is a house within the meaning of the law of arson. 22 Am. Dec. 144; 71 Am. St. Rep. 266.

§ 9851. INHABITABLE BUILDING DEFINED.] Any building is deemed an "inhabitable building," within the meaning of this chapter, any part of which has usually been occupied by any person lodging therein at night. (R. C. 1905, § 9125.)

As to similar provision in Cal. Pen. Code, section 449. See *People v. Russell*, 81 Cal. 616, 23 Pac. 418.

§ 9852. NIGHTTIME DEFINED.] The word "nighttime," in this chapter includes the period between sunset and sunrise. (R. C. 1905, § 9126.)

§ 9853. BURNING DEFINED.] To constitute a burning within the meaning of section 9849 it is not necessary that the building set on fire should be destroyed. It is sufficient that the fire is applied so as to take effect upon the substance of the building. (R. C. 1905, § 9127.)

§ 9854. OWNERSHIP DEFINED.] To constitute arson it is not necessary that another person than the accused should have had ownership in the building set on fire. It is sufficient that at the time of the burning another person was rightfully in the possession of, or was actually occupying, such building or any part thereof. (R. C. 1905, § 9128.)

Arson is setting fire to one's building. 32 L. R. A. 647.

Arson by one spouse burning property of the other. 21 L. R. A. (N. S.) 27.

§ 9855. IMMATERIAL VARIANCE IN PROOF.] An omission to designate, or error in designating in an information or indictment for arson, the owner or occupant of a building, shall not prejudice the proceedings thereupon, if it appears that upon the whole description given of the building, it is sufficiently identified to enable the accused to prepare his defense. (R. C. 1905, § 9129.)

§ 9856. MALICE, WHEN INFERRED.] Malice sufficient to constitute arson is inferred from proof that the accused committed an act of burning a building, and that some other person was rightfully in possession of or actually occupying any part thereof. It is not necessary that the accused should have had actual knowledge of such possession or occupancy or should have intended to injure any person. (R. C. 1905, § 9130.)

§ 9857. BURNING WITHOUT INTENT TO DESTROY.] The burning of a build-

ing under circumstances which show beyond a reasonable doubt that there was no intent to destroy it, is not arson. (R. C. 1905, § 9131.)

§ 9858. CONTIGUOUS BUILDINGS.] When any appurtenance to any building is so situated with reference to such building, or when any building is so situated with reference to another building that the burning of one will manifestly endanger the other, a burning of the one is deemed a burning of the other, within the foregoing definition of arson, and as against any person actually participating in the original setting fire, as of the moment when the fire from the one shall communicate to and burn the other. (R. C. 1905, § 9132.)

§ 9859. DEGREES OF ARSON.] Arson is distinguished into four degrees. (R. C. 1905, § 9133.)

Verdict of "guilty as charged" is sufficient on information charging certain degree of arson. *State v. McDonald*, 16 S. D. 78, 91 N. W. 447.

§ 9860. IN THE FIRST DEGREE.] Maliciously burning in the nighttime an inhabited building, in which there is at the time some human being, is arson in the first degree. (R. C. 1905, § 9134.)

As to similar provision in Cal. Pen. Code, section 454. See *People v. Fisher*, 51 Cal. 319.

§ 9861. EXCEPTION. APPURTENANCE TO BUILDING.] No warehouse, barn, shed, or other outhouse, is a subject of arson in the first degree, unless it is immediately connected with, and forms part of an inhabited building. (R. C. 1905, § 9135.)

§ 9862. ARSON IN SECOND DEGREE.] Maliciously burning in the daytime an inhabited building, in which there is at the time some human being, is arson in the second degree. (R. C. 1905, § 9136.)

§ 9863. WHEN BURNING IN NIGHTTIME IS.] Maliciously burning in the nighttime a building, not an inhabited building, but adjoining to or within curtilage of an inhabited building in which there is at the time some human being, so that such inhabited building is endangered, even though it is not in fact injured by such burning, is arson in the second degree. (R. C. 1905, § 9137.)

§ 9864. ARSON IN THIRD DEGREE.] Maliciously burning in the daytime a building the burning of which in the nighttime would be arson in the second degree, is arson in the third degree. (R. C. 1905, § 9138.)

Sufficient pleading of arson in the third degree. *State v. Young*, 9 N.

D. 165, 82 N. W. 420; *State v. McDonald*, 16 S. D. 78, 91 N. W. 447.

§ 9865. WHEN BURNING IN NIGHTTIME IS.] Maliciously burning in the nighttime any building, not the subject of arson in the first or second degree, including any house for public worship, school house or public building belonging to the state, or to any county, city, town or village, any building in which have usually been deposited the papers of any public officer, and any barn, mill or manufactory, is arson in the third degree. (R. C. 1905, § 9139.)

§ 9866. ARSON IN FOURTH DEGREE.] Maliciously burning in the daytime any building the burning of which in the nighttime would be arson in the third degree, is arson in the fourth degree. (R. C. 1905, § 9140.)

§ 9867. PUNISHMENT FOR ARSON.] Arson is punishable by imprisonment in the penitentiary as follows:

1. Arson in the first degree, for any term not less than ten years.

2. Arson in the second degree, not exceeding ten years and not less than seven years.

3. Arson in the third degree, not exceeding seven years and not less than four years.

4. Arson in the fourth degree, not exceeding four years and not less than one year, or by imprisonment in a county jail not exceeding one year. (R. C. 1905, § 9141.)

Cruel and unusual punishment for arson. 35 L. R. A. 569.

CHAPTER 69.

FRAUDULENTLY FITTING OUT AND DESTROYING VESSELS.

§ 9977. OFFICER WILLFULLY DESTROYING VESSEL.] Every captain or other officer or person in command or charge of any vessel, who, within this state, willfully wrecks, sinks, or otherwise injures or destroys such vessel, or any cargo in such vessel, or willfully permits the same to be wrecked, sunk or otherwise injured or destroyed, with intent to prejudice or defraud an insurer or any other person, is punishable by imprisonment in the penitentiary for life. (R. C. 1905, § 9251.)

§ 9978. OTHERS, SAME.] Every person other than such as are embraced within the last section, who is guilty of an act therein prohibited, is punishable by imprisonment in the penitentiary not exceeding ten years and not less than three. (R. C. 1905, § 9252.)

§ 9979. FITTING OUT VESSEL WITH INTENT TO WRECK.] Every person guilty of fitting out any vessel, or lading any cargo on board of any vessel, with intent to cause or permit the same to be wrecked, sunk or otherwise injured or destroyed, and thereby to prejudice or defraud an insurer or any other person, is punishable by imprisonment in the penitentiary not exceeding ten years and not less than three. (R. C. 1905, § 9253.)

§ 9980. MAKING FALSE MANIFEST.] Every person guilty of preparing, making or subscribing any false or fraudulent manifest, invoice, bill of lading, boat's register or protest, with intent to defraud another, is punishable by imprisonment in the penitentiary not less than one and not exceeding three years, or by a fine not exceeding one thousand dollars, or both. (R. C. 1905, § 9254.)

CHAPTER 70.

FRAUDULENT DESTRUCTION OF PROPERTY INSURED.

§ 9981. DESTROYING PROPERTY INSURED.] Every person who willfully burns or in any other manner injures or destroys any property whatever, which is at the time insured against loss or damage by fire or by any other casualty, with intent to defraud or prejudice the insurer, whether the same is the property of such person or of any other, is punishable by imprisonment in the penitentiary not exceeding seven years and not less than four. (R. C. 1905, § 9255.)

Arson in setting fire to one's own building to injure insurer. 32 L. R. A. 648.

As to similar provision in Cal. Pen. Code, section 548. See *People v. Fong Hong*, 120 Cal. 685, 53 Pac. 265.

§ 9982. PRESENTING FALSE PROOF OF LOSS.] Every person who presents or causes to be presented any false or fraudulent claim, or any proof in support of any such claim, upon any contract of insurance, for the payment of any loss, or who prepares, makes or subscribes any account, certificate, survey, affidavit, proof of loss or other book, paper or writing, with intent to present or use the same, or to allow it to be presented or used in support of any such claim, is punishable by imprisonment in the penitentiary not less than one and not exceeding three years, or by a fine not exceeding one thousand dollars, or both. (R. C. 1905, § 9256.)

SHORT RATE TABLE AT WHICH POLICIES MAY BE CANCELLED.

Days	Per Cent. of Annual Premium	Days	Per Cent. of Annual Premium	Days	Per Cent. of Annual Premium
1	2	18	16	105	45
2	4	19	16	120 or 4 months	50
3	5	20	17	135	55
4	6	25	19	150 or 5 months	60
5	7	30	20	165	65
6	8	35	23	180 or 6 months	67
7	9	40	26	195	73
8	9	45	27	210 or 7 months	75
9	10	50	28	225	78
10	10	55	29	240 or 8 months	80
11	11	60	30	255	83
12	12	65	33	270 or 9 months	85
13	13	70	36	285	88
14	13	75	37	300 or 10 months	90
15	14	80	38	315	93
16	14	85	39	320 or 11 months	95
17	15	90 or 3 months	40	360 or 12 months	100

SHORT RATE TABLE FOR TERM RISKS.

Three-Year Risks		Five-Year Risks	
Term	Per Cent. of Term Premium	Term	Per Cent. of Term Premium
For 3 months or less	20	For 5 months or less	20
Over 3 and not exceeding 6 months	30	Over 5 and not exceeding 10 months	30
Over 6 and not exceeding 9 months	40	Over 10 and not exceeding 15 months	40
Over 9 and not exceeding 12 months	50	Over 15 and not exceeding 20 months	50
Over 12 and not exceeding 15 months	60	Over 20 and not exceeding 25 months	60
Over 15 and not exceeding 18 months	70	Over 25 and not exceeding 30 months	70
Over 18 and not exceeding 21 months	75	Over 30 and not exceeding 35 months	75
Over 21 and not exceeding 24 months	80	Over 35 and not exceeding 40 months	80
Over 24 and not exceeding 27 months	85	Over 40 and not exceeding 45 months	85
Over 27 and not exceeding 30 months	90	Over 45 and not exceeding 50 months	90
Over 30 and not exceeding 33 months	95	Over 50 and not exceeding 55 months	95
Over 33 months	100	Over 55 months	100

FEES

COMPANIES OF ALL OTHER STATES OR COUNTRIES.

Filing articles of incorporation.....	\$ 25.00
Filing annual statement.....	10.00
Certificate of authority.....	2.00
Each agent's license (one for each member of a firm)....	2.00
Each copy of abstract for publication.....	2.00
Two and one-half per cent. of gross premiums received in state.	

Foreign states or nations charging greater fees than the above for like services will be charged at the same rate as their charges.

STATE MUTUAL AND JOINT STOCK COMPANIES ORGANIZED UNDER LAWS OF NORTH DAKOTA.

Filing articles of incorporation.....	\$ 25.00
Filing annual statement.....	10.00
Certificate of authority.....	2.00
Each agent's license (one for each member of a firm)....	2.00
Each copy of abstract for publication.....	2.00

COUNTY MUTUALS.

Company's certificate of authority.....	\$ 2.00
One copy of abstract for publication.....	2.00

FRATERNAL BENEFICIARY ASSOCIATIONS.

Filing annual statement and issuing license.....	\$ 15.00
Copy of records, 25 cents per folio and \$1.00 for seal.	

SUPPLEMENT TO
INSURANCE LAWS
OF NORTH DAKOTA

Enacted by the
Fourteenth Legislative Session
1915

INSURANCE LAWS OF NORTH DAKOTA

ENACTED BY THE
FOURTEENTH LEGISLATIVE ASSEMBLY
1915.

STATE BONDING FUND.

[Senate Bill No. 78.]

AN ACT to establish a State Bonding Fund in the office of the commissioner of insurance, providing for the maintenance thereof, and creating a reserve therefor; prescribing the duties of the officers connected therewith; providing for the payment of premiums and indemnities for losses; and providing for the disposal of the surplus after said reserve has been created.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. ESTABLISHING A STATE BONDING FUND.] A state bonding fund is hereby established for the purpose of providing a fund for the bonding of such officers of counties, cities, towns, villages, school districts and townships as are, or may hereafter be required by law to furnish official bonds.

§ 2. COMMISSIONER OF INSURANCE TO ISSUE BONDS.] It shall be the duty of the commissioner of insurance, as provided in this act, to issue official bonds to all county officials, city officials, town officials, village officials, school district officials, and township officials required by law to furnish official bonds except as hereinafter otherwise provided. No such bonds shall be issued by the commissioner of insurance for the bonding of any official for a greater amount than \$50,000.00; and any official required by law to be bonded in any greater amount than \$50,000.00, shall be bonded in the sum in excess of \$50,000.00 with a duly authorized surety company or by personal sureties. The premiums on such excess bonds, except in the case of personal sureties, shall be paid out of the county, village, city, town, school district or township treasury as the case may be.

If an official who is bonded by both the state bonding department and other surety makes default, then the loss shall be borne between the state bonding department and such other surety in proportion to the amount of bonds furnished by the various parties.

§ 3. PREMIUMS; AMOUNT; TO WHOM PAID.] The premiums of such bonds shall be twenty-five cents per hundred dollars per year on all bonds issued. Such premium shall be paid in advance by the proper authorities of each county, city, town, village, school district or township, from its respective treasury to the state treasurer, who shall issue receipts therefor as hereinafter

provided. The minimum on small bonds and short term officers' bonds shall not be less than \$2.50.

§ 4. Whenever there shall be paid into the state treasury, money for premiums for bonding officials as provided in this act, it shall be known as the state bonding fund, and shall be used as provided for in this act.

§ 5. It shall be the duty of the state treasurer whenever there is any money paid into the state treasury for premiums on bonds, to at once issue quadruple receipts therefor. One, he shall issue to the official for whom the premium is paid, one he shall file in his office, one he shall file with the commissioner of insurance, and one he shall file with the state auditor. Such receipt shall state the amount and date of the bond, name of the officer bonded, and his official duties, his post office address and the county in which he resides.

§ 6. PERIOD OF BONDS.] All bonds executed and furnished hereunder by the commissioner of insurance shall be made to run until the expiration of the officer's term of office, and where such term is less than one year, a full year's premium shall be charged.

§ 7. FORM OF BONDS.] All counties, cities, towns, villages, school districts and townships in the state shall be insured as herein provided against loss by the default of any officer of such counties, cities, towns, villages, school districts and townships who is by law required to furnish a bond, by and through a bond executed by the officer to be bonded and the commissioner of insurance in his official capacity, which bond shall be payable in case of default out of the state bonding fund. Said bonds shall be substantially in the following form, the blanks being properly filled out and the bond being executed by the official and the commissioner of insurance.

§ 8. OFFICIAL BOND.] Know all men by these presents; That..... of..... in the State of North Dakota, hereinafter called the principal, and the state bonding fund of the State of North Dakota as surety, are held and firmly bound unto..... in the State of North Dakota, hereinafter called the obligee, in the sum of for the payment whereof to the obligee the principal binds himself, his heirs, executors, administrators and assigns, and the commissioner of insurance of the State of North Dakota, bind the state bonding fund of the State of North Dakota firmly by these presents.

Signed, sealed and dated this.....day of.....19....

Whereas, The above named principal has been duly appointed or elected to the office of in the State of North Dakota for the term of years beginning on.....

Now, Therefore, The condition of the foregoing obligation is such that if the principal shall faithfully and impartially discharge and perform the duties of his said office, including such duties as are or may be imposed upon him by law, and shall render a true account of all moneys and property of every kind that shall come into his hands as such officer and pay over and deliver the same according to law, this obligation shall be void, otherwise it shall remain in force.

Principal.
State Bonding Fund, Surety,
By.....
Commissioner of Insurance.

Signed, Sealed and Delivered in the presence of:

.....;
;

§ 9. APPOINTMENT OF ATTORNEY FOR SERVICE.] The officer to be bonded shall, prior to the execution of such bond, execute and file in the office of the commissioner of insurance, an instrument appointing the commissioner of insurance and his successors, his true and lawful attorney upon whom all process in any action or proceeding against such officer may be served, and therein shall agree that any process which may be served upon his said attorney, shall be of the same force and validity as if served on him personally and that the authority thereof shall continue in force, irrevocable so long as any liability of such official or of such state bonding fund remains. In actions upon such bond when the sheriff files his return, that he is unable, after diligent search, to find such bonded officer for the purpose of serving the summons, service upon the commissioner of insurance shall be deemed and held to be personal service upon such bonded official. Whenever process against any such bonded official shall be served upon the commissioner of insurance, he shall forthwith mail a copy of such process, postage prepaid, directed to such bonded official at the residence of such official stated in such instrument. The commissioner shall keep a record of all such process which shall show the time and hour of service.

§ 10. BONDS RUN TO WHOM.] All such official bonds shall run to the political sub-division of which the bonded official is an officer, as obligee, and such bonds shall be construed as provided in section 680 of the Compiled Laws of North Dakota, 1913, and any private corporation or person suing such official may recover under such bond and have the protection of the state bonding fund.

§ 11. STATE NOT LIABLE.] Any obligee or private corporation or person may sue upon any such official bond issued by the commissioner of insurance and may join the commissioner of insurance as a co-defendant with the defaulting officer and in case judgment is obtained against such defaulting officer, the judgment shall further specify that such judgment shall be paid out of any funds on hand in the state bonding fund, or that may thereafter accrue to such fund. In case a judgment is paid out of the state bonding fund in any such action, the state bonding fund shall be subrogated under the judgment to the right of the judgment creditor to recover against the defaulting officer. In all proceedings to enforce such right of subrogation the commissioner of insurance as nominal defendant shall act for and in behalf of the state bonding fund; and he may in any action or proceeding appeal from any appealable order or from any judgment against said state bonding fund the same as is provided for other parties to civil actions.

§ 12. OTHER BONDS MAY BE FURNISHED.] This act shall not be construed to prevent any person elected or appointed to office from furnishing in lieu of the bond provided for in this act, a bond by personal sureties or by a surety company, but no officer or board of any county, city, town, village, school district or township shall have the right to pay for any such bond or bonds out of any public funds, except for such bonds as are procured to cover the excess over \$50,000.00 as provided in section 2.

§ 13. BONDS, HOW CONSTRUED.] The bonds issued in pursuance of this

act shall be construed and held to inure to the benefit of not only the political sub-divisions named as obligee but also to the benefit of any person damaged by any wrongful act or omission of the bonded official; and any person so damaged may in an action upon the bond brought in his own name as plaintiff against the official bonded join the commissioner of insurance as a co-defendant, and thereby subject the state bonding fund to the payment of any judgment so obtained.

§ 14. CLERICAL HELP PROVIDED, EXPENSES, HOW PAID.] It shall be the duty of the commissioner of insurance and the state auditing board to estimate at the beginning of each year the amount required for additional clerical help and incidental office expenses made necessary by the additional work devolving upon his office on account of the provisions of this act for that year, which estimated amount shall be reserved from the premiums paid in and shall not exceed the sum of \$1,500.00 per annum. The amount of premium receipts remaining shall be used for the payment of losses; provided, that if the amount reserved for clerical assistance and incidental office expenses is more than sufficient to pay the same the excess shall be used to pay losses. The commissioner of insurance shall have the authority to engage clerical assistance to conduct the transactions provided for by this act. He shall also prepare and provide the necessary blanks, books, stationery and postage and cause the same to be delivered to the proper officers and persons. Such expenses and the salaries of such clerical assistance shall be audited and allowed by the state auditing board.

§ 15. NOTICE OF LOSS; DUTY OF STATE EXAMINER.] Whenever a loss shall occur in any county, city, village, township or school district by the default of any officer of the same whose fidelity has been insured under the provisions of this act, it shall be the duty of the county auditor, city auditor, village, township or school district clerk or treasurer in case the defaulting officer is the auditor or clerk, as the case may be, immediately to notify the commissioner of insurance. The commissioner of insurance shall thereupon notify the state examiner; and it shall be the duty of the state examiner when so notified to check the accounts of such defaulting official and file a report with the commissioner of insurance.

§ 16. SURPLUS. HOW USED.] Any sum which remains unexpended at the end of any one year shall remain in the state bonding fund which shall accrue until it equals in amount \$100,000.00, after which the surplus in excess of \$100,000.00 shall be distributed at the close of each year to the various counties, cities, townships, villages, school districts and towns in proportion to the amount of premium paid into the state bonding fund. In case there shall not be a sufficient amount in the state bonding fund to pay the losses sustained after the reservation of funds to cover clerical assistance and other incidental expenses for the conduct of the bonding department for the year, such losses shall be paid as soon as sufficient funds are accumulated in the state bonding fund by collection of premiums.

§ 17. FUND TO DRAW INTEREST.] The state treasurer shall deposit the state bonding fund in approved state depositories at the usual rate of interest paid on other funds of the state, subject to check, but whenever there is in such checking account more than \$10,000.00 the state treasurer shall deposit

the same upon time certificates of deposit drawing the same rate of interest as other state funds deposited upon time certificates.

§ 18. REPORT.] The commissioner of insurance shall on or about the first day of January in each year, publish in four newspapers of general circulation within the state a copy of the statement of his work and of the condition of the bonding department during the preceding year, and he shall make a biennial report to the governor and the legislative assembly containing a detailed statement of the work and the condition of said bonding department during the preceding biennial period.

§ 19. MAY REQUIRE STATEMENTS.] The commissioner of insurance shall require and obtain from the various officials bonded statements annually and as often as he deems necessary, of their receipts, bank accounts and disbursements verified by the county auditor, city auditor, or clerk of each town, village, school district and township. To verify such statements he may communicate with each bank having such deposits and he may require any such official to furnish him with any information concerning the office of which he is an incumbent and said commissioner shall file all such information in his office in a proper manner and such records and files shall be open for public inspection. The commissioner of insurance shall supply to each county and city auditor and each town, village, school district, and township clerk, a sufficient number of application blanks.

§ 20. STATE EXAMINER TO CHECK ACCOUNTS.] In case any official shall default, it shall be the duty of the state examiner immediately to check the accounts of such defaulting official and file a report with the commissioner of insurance stating the amount due upon such defaulting officer's bond and for such services he shall be paid out of the state bonding fund, the same fees as he is paid for examining the accounts of county officers.

§ 21. MAY REQUIRE AN ACCOUNTING.] If at any time, the commissioner of insurance shall be of the opinion that the interests of the state bonding fund are jeopardized by the misconduct or inefficiency of any bonded official, it shall be his duty to cause an action for an accounting to be instituted against such bonded official for the purpose of requiring a complete disclosure of the business of the office of which such official is an incumbent. Such action shall be brought in the name of the commissioner of insurance as plaintiff and the court may in such action interplead the obligee and render such judgment as shall protect the rights of all parties concerned. If at any time the commissioner of insurance deems it advisable, it shall be his duty to make a complaint to the governor requesting the governor to institute an investigation with the purpose of removing from office any defaulting official or any official who so conducts the affairs of his office as to endanger the state bonding fund.

§ 22. DUTY OF ATTORNEY GENERAL.] It is hereby made the duty of the attorney general to act as attorney for the commissioner of insurance in any and all actions and proceedings to which the commissioner of insurance is a party, on behalf of the state bonding fund.

§ 23. COMMISSIONER MAY REJECT APPLICATION.] When any official applies to the commissioner of insurance for the issuance to him of an official bond, the commissioner of insurance may, after due investigation, reject such application if in his judgment the interests of the state bonding fund require such action. In such case the official whose application is rejected may secure a bond exe-

cuted either by private surety or by a duly authorized surety company, but no officer or board of any political sub-division shall have the power to disburse public funds to pay the premium on such bonds.

§ 24. APPEAL.] The commissioner of insurance shall immediately notify the applicant of such rejection by registered mail, and the applicant shall have twenty days after the receipt of such notice within which to take an appeal from such decision of the commissioner of insurance to the district judge of the judicial district in which the applicant resides. The judge of said court shall hear such appeal at a day to be fixed by him not less than ten nor more than thirty days after the filing of the appeal with the clerk. The case shall be tried by the court without a jury. Notice of such appeal shall be served by the appellant upon the commissioner of insurance.

§ 25. REPEAL.] All acts and parts of acts in so far as they conflict with the provisions of this act are hereby repealed.

§ 26. This act shall take effect January 1st, 1916.

Approved, March 8, 1915.

[House Bill No. 165. Laws 1915.]

PROVIDING FOR COUNTY AND DISTRICT MUTUAL INSURANCE COMPANIES.

AN ACT Providing for the organization, regulation and general management of county and district mutual fire, lightning and cyclone insurance companies, and repealing acts and parts of acts in conflict therewith.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

ARTICLE 1.

§ 1. Any number of persons, not less than fifty, residing in not more than ten counties in this state, who collectively own property of not less than one hundred thousand dollars in value, which they desire to insure, or any number of persons not less than twenty-five, residing in any one county, owning property of not less than twenty-five thousand dollars in value, which they desire to insure, may form a corporation for mutual insurance against loss or damage by fire, lightning or cyclone, or all of the above, which shall possess the powers and be subject to the duties and liabilities of other insurance companies, except as hereinafter provided:

The principal office of the corporation must be located within the limits of the county or counties in which the incorporators reside. The name of the county, together with the word "county" shall be embraced in the corporate name of the company when organized by the residents of a single county. Provided, that any corporation, organized under the provisions of this act for mutual protection against loss or damage by tornadoes, wind storms, and cyclones only, may operate and issue policies in all the counties of the state, but shall in all other matters be regulated and limited by the provisions of this act.

§ 2. Such persons shall file with the commissioner of insurance a declaration of their intention to form a company for the purpose expressed in the preceding section, which declaration shall be signed by not less than three of

the incorporators, and shall be accompanied by sufficient evidence of the execution of bona fide application for such insurance to the number and amount stated in the preceding section, and which said declaration shall contain a copy of the articles of incorporation proposed to be adopted by said incorporations. Such articles of incorporation shall set forth the name of the corporation, the name of the city, town or village in which the business office of such company is to be located, and the intended duration of the company, and if it is found conformable to this act and not inconsistent with the laws and constitution of this state, the commissioner of insurance shall thereupon deliver to such persons a certified copy of its articles of incorporation, and a certificate to the effect that said corporation has complied with all the requirements of law, which, on being filed in the office of the register of deeds of the county where the principal office of the corporation is located shall be its authority to commence business and issue policies, and such certified copy of the articles of incorporation and of such certificate may be used for or against such company, with the same effect as the original, and shall be conclusive evidence of the fact of the organization of such corporation.

§ 3. The number of directors shall be not less than five (5) and not more than fifteen (15) a majority of whom shall constitute a quorum to do business, to be elected by the members of said company in the manner provided by the by-laws of said company, and, if not otherwise provided, by ballot, of whom one-third shall be elected for one year, one-third for two years and one-third for three years, and until their successors are elected and qualified; in all subsequent elections, except to fill vacancies, one-third of said board of directors shall be elected for three years; said election shall be held at the annual meeting of the company which shall be held on the second Thursday of January of each year, unless otherwise provided by their by-laws. In the election of the first board of directors each incorporator shall be entitled to one vote. At every subsequent election each person insured shall be entitled to one vote for each director to be elected. Twenty members shall constitute a quorum at such annual meeting for the transaction of business.

§ 4. The directors shall elect from their number, a president, and a vice-president, and shall also select a secretary and treasurer, who may or may not be members of the company, all of whom shall hold their office for one year, and until their successors are elected and qualified, provided, that the office of secretary and treasurer may both be held by one person.

§ 5. The treasurer and secretary shall each give bonds to the company for the faithful performance of their duties in such amounts as shall be prescribed by the board of directors.

§ 6. Such corporation and its directors shall possess the usual powers and be subject to the usual duties of corporations and directors thereof and may make by-laws, not inconsistent with the constitution or laws of this state, as may be deemed necessary for the management of its affairs in accordance with the provisions of this act; also to prescribe the duties of its officers and fix their compensation, and to alter and amend its by-laws when necessary.

§ 7. Any person owning property within the limits of the territory in which such company is authorized to transact business may become a member of such company by insuring therein, and shall be entitled to all the rights and priv-

illeges appertaining thereto; but no person not residing within said territory shall become a director of said company.

§ 8. No company formed under the provisions of this act shall insure any property beyond the limits of the territory comprised in the formation of such company, nor shall it insure any property other than detached dwellings, their contents; farm buildings, their contents; country school houses, furniture, books and fixtures; country churches, furniture and other contents; automobiles, only while in the buildings on premises; live stock on the premises or anywhere within the limits of said territory; farm machinery and vehicles in the buildings or on the premises, including threshing machines while not in service, only, and hay or grain in stack on said premises; said policies may cover loss or damage to live stock, harness and vehicles temporarily taken from the territory of the company; provided, said live stock, harness and vehicles be not removed to exceed twenty-five miles from the territory of the company. Said policies shall be issued for not to exceed five years, and not to extend beyond the limited duration of said company. Nor shall any policy be issued covering property located within the platted limits of any incorporated city, town or village in this state.

§ 9. Any such company may classify the property insured therein at the time of issuing policies thereon under different rates corresponding as nearly as may be to the greater or less risk from fire or lightning and loss which may attach to each several buildings insured.

§ 10. Every person insured under the provisions of this act shall give his undertaking, bearing even date with the policy so issued to assigns, to pay his pro rata share to the company of all losses or damages by fire, lightning or cyclone, which may be sustained by any member thereof, which said undertaking shall be filed with the secretary in the office of said company before the issuance of such policy, and shall remain on file in the office except when required to be produced in court as evidence. He shall also at the time of receiving such insurance pay such percentage in cash, or such reasonable sum named in the policy as may be required by the rules and by-laws of the company.

§ 11. Every member of such company who may sustain loss or damage by fire, lightning or cyclone, shall immediately notify the secretary of such company, or in case of his absence, the president thereof, which officer shall forthwith ascertain and cause to be adjusted in manner provided for in the by-laws of said company, or forthwith convene the directors of said company, whose duty it shall be to appoint a committee of not more than three members of such company to ascertain the amount of such loss, and in case of the inability of the parties to agree upon the amount of damage the claimant shall choose a disinterested party, and the company shall choose a disinterested party, who shall constitute a board of arbitration to settle such loss, and in case these parties cannot agree, they shall choose a third party to act with them and such board of arbitration shall have power to examine witnesses and to determine all matters in dispute and the decision of such board shall be final. Any officer or member of such company acting as an adjuster, and the members of any board of arbitration which may be appointed in accordance with the provisions of this section shall have full power to subpoena witnesses, administer oaths, examine witnesses and take acknowledgments while acting in the capacity of such adjuster or member of board of arbitration.

§ 12. Whenever the amount of any loss shall have been ascertained if it exceed the amount of cash funds of the company applicable to the payment of such loss, the president shall convene the directors of the company, who shall make an assessment sufficient at least to pay such loss from all members of the company in proportion to the amount of insurance carried. Provided, that, if there be no quorum present, the secretary shall enter the fact on his journal and the names of the directors present, whereupon the president, secretary and treasurer shall proceed to estimate the rate per cent. necessary to cover the loss and expense thereby incurred, and assess the same upon all the insured members of the said company, which said assessment shall be valid and shall be collected in the same way as though it had been made by the board of directors, in the regular manner. The board of directors may levy and collect an assessment for the purpose of providing funds for the payment of current expenses of the company or for the purpose of establishing a permanent loss fund, which permanent loss fund shall at no time exceed one per cent. of the insurance in force, and such assessments so levied shall be collectible in the same manner as assessment made for the payment of current losses. In case an assessment made shall not be collected at the time same is due and the amount actually collected is insufficient to pay the losses or expenses of the company, then a second assessment shall be made, in the manner above provided, upon the policy holders who have paid their assessment for an amount that shall be sufficient to pay all losses and expenses in full. Such assessments shall be made from time to time until a sufficient amount is collected to pay all losses and expenses in full. In case any such delinquent assessment is collected after other assessments have been made and collected, then such assessment so collected shall be added to the permanent loss fund.

§ 13. It shall be the duty of the secretary whenever such assessments shall have been completed to notify every member of such company by letter sent to his last known post office address, postage prepaid, of the amount of such assessment, the purpose for which made, and if for the payment of certain losses, the amounts of such losses, the sum due from such member as his share of such assessment, the time when and to whom payment shall be paid which shall not be less than thirty nor more than sixty days from the date of such notice. The board of directors shall have the authority, in their discretion to borrow money for the payment of any unpaid losses, said borrowed money to be repaid from moneys collected from the next ensuing assessment levied in accordance with the provisions of this act.

§ 14. Suits at law may be brought against any member of said company who shall neglect or refuse to pay any assessment made upon him under the provisions of this act; and the directors of any company so formed who shall willfully refuse or neglect to perform the duties imposed upon him by the provisions of this act, shall be liable in their individual capacity to any person sustaining such loss. Suits at law may also be brought and maintained against such company, by members thereof, for losses sustained if payment is withheld after such losses have become due.

§ 15. Any member of such company may withdraw therefrom by surrendering his policy for cancellation at any time while the company continues to transact the business for which it was organized, by giving notice in writing

to the secretary thereof, and paying his share of all claims then existing against said company; provided, that by the withdrawal of such member, the number of members remaining in such company shall not be reduced below the original number of incorporators, or that the assets will not be reduced below the amount at the time of incorporation; provided, further, that the company shall have power at any time to terminate or cancel any policy, by giving the insured written notice to that effect and returning to such insured any unearned premium which he may have paid, pro rata.

§ 16. Non-residents of any county in this state, owning property therein, may become members of any company incorporated under this act, and shall be entitled to all the rights and privileges pertaining thereto, except that they cannot become directors of such company.

§ 17. No company formed under the provisions of this act shall continue for a longer term than thirty years.

§ 18. The secretary of the company shall prepare and submit to the members thereof, at each annual meeting, a copy of the annual statement required to be filed with the commissioner of insurance, as provided in section 4949 of the compiled laws of 1913, of the State of North Dakota.

§ 19. In all other respects companies organized under the provisions of this act, shall be subject to the provisions of the general laws of the State of North Dakota relating to such insurance companies.

§ 20. Any such companies now organized and transacting business in this state, whose articles of incorporation or by-laws or any part of them conflict with the provisions of this act, shall within a reasonable time after the passage and approval of this act, amend such articles or by-laws to conform to the provisions hereof and file such amendments with the commissioner of insurance.

§ 21. All acts or parts of acts which conflict with the provisions of this act are hereby repealed.

Approved, March 9, 1915.

[Senate Bill No. 103.]

EXEMPTING LIFE INSURANCE POLICIES FROM CLAIMS OF CREDITORS.

AN ACT to exempt policies of life insurance and annuities from the claims of creditors, in certain cases.

Be it Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. The surrender value of any policy of life insurance, which policy of insurance would upon the death of the insured be payable to the wife or children or any relative of the insured dependent or liable to be dependent upon him for support, shall be absolutely exempt from the claims of creditors of the insured, and no creditor and no court or officer of a court acting for the creditors of such insured shall have the right under any circumstances to elect for the insured to have such policy of insurance surrendered or in anywise converted into money; and no such policy of life insurance and no property right therein belonging to the holder and no value thereof shall under any circumstances, be subject to seizure under any process of any court.

Approved, March 5, 1915.

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